

**UNIVERZA V LJUBLJANI
FAKULTETA ZA DRUŽBENE VEDE**

Ana Urlič

**Politično pogojevanje proti političnim kriterijem v procesu pridruženja
Evropski uniji:
Primerjalna analiza pristopnih kriterijev Slovenije in Hrvaške**

**Political conditionality vs. political criteria in the European Union accession
process:
Comparative analysis of Slovenian and Croatian accession criteria**

Magistrsko delo

Ljubljana, 2012

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Mentorica: doc. dr. Ana Bojinović Fenko

Somentor: doc. dr. Milan Brglez

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Ubi bene ibi patria.

Political conditionality vs. Political criteria in European Union accession process: Comparative analysis of Slovenian and Croatian accession criteria

This study aimed to analyze the application of political conditionality through the implementation of the political criteria in the case of Slovenian and Croatian accession to the EU. With the number of member states that rose from seven in 1952 to 28 in 2013, the range of conditions that a state must fulfil in order to become a member, extended as well. The political (Copenhagen) criteria played an important, if not the most important role in the Croatian negotiations – Croatia's failure to meet those criteria resulted in postponing the accession talks. In the thesis I tried to determine whether the political conditionality as an interpretation of the political criteria by the Commission and the European Council really applied differently to Croatia than to Slovenia. Starting from the premise that political conditionality is based on consistent and normative implementation by the EU institutions, this thesis confirms the assertion that the European Commission and the European Council did not evaluate the countries' success only based on how successful they were in meeting the required criteria but mainly on the basis of their starting positions. The latter could be identified as the two types of factors, first are those regarding the EU absorption capacity and the other group of factors are Croatian particularities. The findings of this thesis offer potential for application to a possible (re)designing of political conditionality in future EU enlargement policy and also to (future) candidate states' foreign policy strategy in negotiation process.

Keywords: EU, political conditionality, Croatia, Slovenia.

Politično pogojevanje proti političnim kriterijem v procesu pridruževanja Evropski uniji: Primerjalna analiza pristopnih kriterijev Slovenije in Hrvaške

Cilj magistrskega dela je bil analizirati izvajanje političnega pogojevanja z uporabo političnih kriterijev na primerih slovenskega in hrvaškega pridruževanja EU. S porastom števila držav članic s sedem iz leta 1952 na osemindvajset, kolikor jih bo EU štela leta 2013, se je povečal tudi obseg pogojev, ki jih morajo države izpolnjevati za članstvo v EU. Politični (kopenhagenski kriteriji) so imeli zelo pomembno, če ne celo najpomembnejšo, vlogo v hrvaškem pogajalskem procesu – posledica neizpolnjevanja teh pogojev je bila odložitev hrvaških pristopnih pogajanj. V magistrskem delu sem skušala odgovoriti na vprašanje, ali se je politično pogojevanje z interpretacijo političnih kriterijev, ki sta ga izvajala Komisija in Evropski svet, razlikovalo v primerih Slovenije in Hrvaške. Izhajajoč iz predpostavke, da je za politično pogojevanje ključna konsistentna in normativna implementacija s strani institucij EU, magistrsko delo potrjuje domnevo, da Evropska komisija in Evropski svet nista ocenjevala napredka držav zgolj na podlagi njune uspešnosti pri izpolnjevanju danih kriterijev, marveč predvsem na osnovi njihovih izhodiščnih pozicij. Med slednje lahko prištevamo dva tipa dejavnikov; prvi zadevajo absorpcijsko sposobnost EU, druga skupina dejavnikov pa se nanaša na hrvaške posebnosti. Izsledki magistrskega dela bi lahko bili uporabljeni v procesu morebitnega (pre)oblikovanja političnega pogojevanja pri bodoči širitveni politiki EU ter pri zunanjepolitičnih strategijah (bodočih) držav kandidat v njihovem pogajalskem procesu.

Ključne besede: EU, politično pogojevanje, Hrvaška, Slovenija

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ACRONYMS

CEE	Central and Eastern Europe
CEEC	Central and Eastern European Countries
The Council	The European Council
The Commission	European Commission
EU	European Union
ECJ	European Court of Justice
ICTY	International Criminal Tribunal for the former Yugoslavia
IPA	Instrument for Pre-Accession Assistance
NATO	North Atlantic Treaty Organization
MFA	Ministry of Foreign Affairs
PHARE	Pologne et Hongrie - Aide á Restructuration Economique
SAA	Stabilisation and Association Agreement
TEU	Treaty on the European Union

1 INTRODUCTION

1.1 Theme relevance

The democratization of the former socialist countries and the collapse of the military-political division of Europe, on the one hand, prompted the European Union (EU, also the Union) to be open to new members (Jacobsen 1997; Lajh and Krašovec 2007). On the other hand, the former socialist countries of Central and Eastern Europe (CEE) developed to satisfactory levels; in the project of joining the EU, it was primarily everything about the rule of law, democracy and human rights (Bučar and Brinar 2002). In this context, the EU proved to be a stimulator of democratic transition which encourages democratic development, respect for fundamental human rights and openness of the political system. As an optimistic student/researcher I hope that with first Central and Eastern European countries (CEEC) as member states word division ceased and that with accession of remaining countries word Europe will occur in true sense.

Elementary conditions that have to be fulfilled before states are allowed to enter the negotiations with the EU are liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law (Lisbon Treaty, Art. 49).¹ Negotiations cover the adoption of *acquis communautaire*, which is in fact a set of the specific rules for each state. It is important to mention that Western Balkans countries with European perspective² have to sign Stabilization and Association Agreement in order of closer cooperation and political and economic stability in the region, which was not the case in 2004 and in 2007 enlargements (both pertain to enlargement of CEEC).³ For Croatia, however, this was the first step towards its EU membership. The accession to the EU is a process of massive policy transfer under which the candidate states have to transpose the full *acquis communautaire* (Schimmelfennig and Schwellnuss 2006). The hypothesis of the importance of the political criteria has already been tested on Slovakia – negative assessment in 1998 temporarily deleted Slovakia from the list of first-wave countries.

¹ Treaty of Lisbon, amending the Treaty on the European Union and changing the Treaty establishing the European Community into the Treaty on the Functioning of the European Union, signed in Lisbon on 13 December 2007, in force since 1 December 2009.

² Croatia, the former Yugoslav Republic of Macedonia, Albania, Bosnia and Herzegovina, Montenegro, Serbia and Kosovo under UN Security Council Resolution 1244.

³ Terminology CEEC will be used for Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Slovak Republic and Slovenia.

With this act, the EU made basic liberal norms essential and nonnegotiable conditions (Schimmelfennig and Sedelmeier 2005, 31). Political criteria have to be distinguished from ‘political conditionality’. Conditionality describes the process of laying down and monitoring the conditions for new states to become members of the EU. The purpose of setting conditions is to ensure that states are prepared for membership, whilst reassuring existing members that new members will not undermine the organization (Barnes and Barnes 2010, 431).

The topic of EU enlargement is vast and complex and is in fact a discussion about European future. The EU enlargement in May 2004 was a unique event in comparison to the previous European integration processes: ten new member states (including Slovenia)⁴ have reached a sufficient degree of compliance with the membership criteria and joined the *sui generis* supranational structure. In the latest expansion in 2007, Bulgaria and Romania joined the EU and the process was highlighted with the need of Bulgaria’s further reform of judicial structures, particularly in its pre-trial phases, as well as the need for further efforts in fight against corruption and organized crime (European Commission 2011).⁵

On December 9th 2011, representatives of Croatia signed the Treaty of accession to the EU⁶ at a grand ceremony staged in Brussels. With the entry into force of the Treaty, Croatia will become full Union member, presumably by July 1st, 2013. Until then, it will have an observer status in the EU with the right to participate in the committees of the European Parliament as well as the right to send observers to the Parliament’s plenary sessions. This act marked a successful end of the longest negotiations out of all the countries in transition (CEEC) that have become member states of the EU. EU membership was and still is, together with good neighbourhood policy and good cooperation in North Atlantic Treaty Organization (NATO) Croatian most important foreign policy goal (Croatian Ministry of Foreign and European Affairs 2011) as it was Slovenian, expressed in the countries 1999 Declaration on Foreign Policy.⁷

⁴ The ten EU Member States since 2004 are Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

⁵ Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, 2006.

⁶ Accession Treaty: Treaty concerning the accession of the Republic of Croatia, signed December 9th 2011, in process of ratification.

⁷ Declaration on foreign policy of the Republic of Slovenia [*Deklaracija o zunanji politiki Republike Slovenije*], endorsed by the National Assembly of the Republic of Slovenia on 17 December 1999.

The supposition of this thesis was that the concrete EU demands in the negotiation process varied significantly between Slovenian and Croatian accession processes. Because of the indisputable political relevance of the (future) EU enlargement, it was important to examine the reasons if and why EU enlargement policy treated these two countries in a different manner. In the context of analysing this question, this thesis also provides an overview of evolution of the EU enlargement policy. Much of the literature refers to political conditionality in the EU enlargement process, but there is a lack of comparative analysis, especially of Slovenian and Croatian accession processes. One of the reasons is the fact that Croatia finished the negotiations less than a year ago. Taking into account the weight of indisputable political relevance of the EU enlargement and political conditionality in the accession process, I believe that the conclusions from this thesis will be relevant in upcoming enlargements.

1.2 The basic objectives of the master thesis

The European enlargement process began with well known Inner Six, which were the founding members of the European Coal and Steel Community in 1952. Since then, the EU's membership has grown to 27 with the latest expansion in 2007, to Bulgaria and Romania. The entry of ten new member states into the EU marked the culmination of a historic process of economic transition that commenced with the fall of Communism in 1989. While the economic weight of the new members might seem relatively small compared to EU-15, the dynamics of growth, commitment to internal reforms, and the desire to close the income gap with the rest of the EU, may well provide a key impulse to future economic development in Europe (Artis et al. 2006).

According to the 49th Article of the Treaty on the European Union (also TEU) “any European State which respects the principles set out in Article 6(1) TEU may apply to become a member of the Union”. As already mentioned, the principles stated in Article 6 are ‘liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law’.

From 1993, the standard preconditions for membership are based on the Copenhagen criteria. The requirements as set by the European Council (1993) known as the Copenhagen criteria are the following:⁸

- political criteria: stable institutions that guarantee democracy, the rule of law, human rights and respect for and protection of minorities;
- economic criterion: a functioning market economy, as well as the ability to cope with the pressure of competition and the market forces at work inside the Union;
- the ability to assume the obligations of membership, in particular adherence to the objectives of political, economic and monetary union.

After two years, the Copenhagen criteria was extended in Madrid by a so called administrative criterion in a way that accession countries had to provide sufficient justice and administration capacity in order to incorporate the *acquis communautaire* (Conclusions of the Spanish Presidency 1995).⁹

The specificity of criteria related to democracy and the rule of law is that they are very difficult to measure and matters are here more complicated in relation to other criteria (Beurdeley 2003). Even though the political requirement ranks as the most important in practical assessment of the Copenhagen criteria (Nello 2009), it is very surprising that in the literature there was an evident lack of comprehensive analysis on this topic (European Commission Composite Paper 1998). Hence, due to the ambiguity in interpreting and in measurement of political criteria it is hard to define and discuss them in detail. This is also one of the reasons why this research focuses on main political criteria with the aim of filling the literature gap and offering a viable explanation and interpretation of aforementioned problematic.

As already mentioned above, political conditionality is regarded as a successful strategy of the EU's enlargement policy. By making a highly attractive external incentive – the benefits coming with membership – conditional on democracy, human rights, and peaceful conflict management, the EU has induced its would-be members to conform to these political norms (Schimmelfenning 2008). Thus, political conditionality is a method used by the EU which promotes political norms

⁸ Conclusion of the Presidency by European Council in Copenhagen, 21–22 June 1993.

⁹ Conclusions of the Presidency by European Council in Madrid 15–16 December 1995.

and it consists of positive and negative actions. This study mainly focuses on the second method – negative actions for acceding countries which do not comply with the EU conditions mentioned above.

Besides the ability to cope with the obligations of membership, the so called *acquis communautaire*, and the economic criteria (the second and the third criterion), the highest priority is often given to the first condition, i.e. the political criteria: requirement of democracy, the rule of law, respect for human rights and protection of minorities. No clear indication is provided, however, about the relative weight and importance of the four accession criteria, although it seems that the political requirement still ranks as the highest in the practical assessment of the Copenhagen criteria (Nello 2009; Laermans and Rooses 2008).

Delaying the start of negotiations on full EU membership and the longest negotiations among other acceding countries in the region provoked criticism in Croatia. The common perception is that the EU demanded from Croatia the achievement of a set of more challenging political conditions than was the case with countries acceding in 2004 and 2007. On the other side, combined with the fact that war dominated the agenda of Croatia (1991–1995) and made the issue of security the country's primary concern and concerning the fact that Croatia was in this time excluded from pre-accession aid programmes like PHARE (*Pologne et Hongrie - Aide à Restructuration Economique*) it was not surprising that the EU lacked a considered approach and generally found difficult to cope with the fragile security there (Pridham 2005, 37).

Each new acceding country has its own particular difficulties and deficiencies which haven't been present in previous enlargement processes. The lack of enlargement experience and consequently the deficiency of a comprehensive approach in the formulation of the EU's political conditionality is undeniable, and may be the cause of the inconsistent use of enlargement conditions (Mehikić and Šabić 2008). Although European Commission stated that negotiations on 2004 enlargement were based on the principle of 'differentiation', i. e. that each country's progresses at its own pace according to its level of preparation for accession (Summaries of EU legislation 2012), this thesis challenged such assertion as not entirely accurate. I assumed that the

fact that Slovenia negotiated its accession as member of an acceding group affected the pace and progress of its negotiating process, and will try to demonstrate this in the thesis.

The main goal of this thesis was to examine if and why the fulfilment of Copenhagen political criteria differed in the process of accession of countries in 2004 in case of Slovenia and in 2012 in case of Croatia. This research therefore focused on main political criteria that candidate countries have to fulfil, i.e. political requirement of democracy, the rule of law, respect for human rights and protection of minorities. Economic criteria, adjustment of administrative structures and adoption of the *acquis communautaire* as unavoidable conditions for EU membership are generally explained in order to provide an adequate context of an EU enlargement process and of the two country cases, selected for this research.

Political conditionality, which ties specific reward to fulfilment of defined conditions and is closely linked to the EU's self-definition as normative actor (DeBardeleben 2008), are examined through the accession process of the abovementioned two countries. The carrots and sticks method works best when exercised in the advancement of membership, which was best seen in the EU accession countries in 1990s and 2000s (Ibid.). Accession conditionality has to be credible in two ways: it has to target countries' need to be certain that they are rewarded with significant steps toward accession (soon) after complying with the EU's political conditions – and that they will be excluded from the EU membership otherwise (Schimmelfenning 2008, 920). From 1997 Commission has regularly evaluated the political conditions in all candidate countries. For example, its negative assessment temporarily deleted Slovakia from the list of first-wave countries, and after that Turkey's failure to fulfil the political criteria has been a serious obstacle to opening and afterwards to the continuation of negotiations. The main lesson to be learned is that serious violation of political preconditions can lead to termination of negotiations (Pridham 2005, 56). One of the goals of this thesis was also to apply this negative conditionality to the chosen states – Slovenia and Croatia and to compare the use of this conditionality in the two cases.

1.3 Research question and theses

I based this study on the following research question: if they exist, what are the differences between the application of political criteria for accession to the EU in accession negotiations of Slovenia and Croatia? I have posed the following two theses, which I tried to support or weaken by argumentation.

Thesis 1: The European Commission and the European Council implemented political conditionality as interpretation of political criteria for EU accession towards Croatia more meticulously than towards Slovenia.

Thesis 2: The above differentiation between Slovenia and Croatia was implemented by both EU institutions due to the different assessment of the two states' starting points in the process of accession negotiations.

Thus, the research argues that the Commission and the European Council do not assess success of the state in the accession negotiations according to the states' de facto implementation of political criteria but on the basis of the initial assessment (starting point) of the state. More accurately, because the two states starting positions in the process of accession negotiations have been assessed as different the Commission (in its Progress Reports) and the European Council (in its Presidency Conclusions) have different interpretations of political criteria through political conditionality towards Croatia than towards Slovenia. The starting position was assessed as more demanding for Croatia than for Slovenia and thus the two institutions discriminated between the two states, respectfully, by applying more meticulous interpretation of political criteria through political conditionality for Croatia than for Slovenia.

1.4. Research methods and the structure of master thesis

In the first chapter, I introduce the theme relevance through literature review and set political conditionality in the broader context of the EU enlargement process and accession criteria. I also put forward the reasons for which the problematique is relevant and makes this study necessary and develop its aims. I present the methodology used to answer the set research question and two theses.

In the second chapter, using methodology indebted to historical analysis and analysis and interpretation of primary and secondary sources, I explore the requirements for EU membership, with special emphasis on political criteria. In its communication "Agenda 2000", the European Commission set out a range of proposals for strengthening the pre-accession strategy for all the candidate countries from CEEC after which the Commission now modified priorities for each country depending on the progress achieved and tasks remaining (Summaries of EU legislation 2012). In this chapter I outline the pre-accession strategies for two chosen countries – Slovenia and Croatia – in order to identify the principal differences in their starting positions and to contribute to understanding why Commission's demands varied in each accession process. For this analysis it is important to stress that both Slovenia and Croatia are young democracies and that their administrations had/have difficulties in coping with the conditions of accession.

The third chapter deals with the analysis of the procedure which has to be completed by each applicant state in order to become full member state. According to Article 49 TEU, alongside the applicant country and the member states these actors are: the European Council, the Commission and the European Parliament. Jurisdiction of the three actors varies according to the negotiation phase (Barnes and Barnes 2010). I especially exposed the role of the Commission and have also chosen to analyse the role of the European Council, who is the main political driver of the Union and especially of the political conditionality used in the EU negotiation process. Since the European Council represents interests of EU members states and demands unanimity as voting procedure (i. e. permits veto application by each member state), this institution is of crucial relevance to my study of political conditionality application.

Certain candidate countries were established democracies and they had the capacity to cope with the process of integration. On the other hand, the countries of CEEC and Western Balkan countries need(ed) further reforms in order to join the EU. Following the above mentioned, in the fourth chapter, I applied the historical analysis in order to provide a short insight into the process of the EU enlargement. In this chapter, my focus is on the two enlargements, especially on Slovenian and Croatian. Croatia will join the EU on 1 July 2013, as the 28th member state. The interpretation of primary and secondary sources was again the basis of the research in this, fourth, chapter.

Political conditionality as a strategy and method used by the EU to promote its political norms, applying positive and negative actions, is discussed as the central point of my research in great detail in the fifth chapter. I used descriptive method – a historical analysis of political conditionality and present important cases of conditionality in the EU accessions from 1973 to the 2004 EU enlargement. Special attention to political conditionality of Slovenian and Croatian entry into the EU is then the subject of (comparative) analysis in the next, sixth chapter.

In my theses I presupposed that concrete EU demands as seen in political conditionality varied between Slovenian and Croatian negotiation process. The analysis which corroborates these conclusions could shed a new light on the theoretical debate on political conditionality and conditions of the EU in Central and Easter Europe, but it also unavoidable required a legal basis. I have chosen two plausible ways of deriving conclusions: 1) by applying a comparative analysis of the countries success in meeting the political criteria and the political conditionality by the EU as stated in Commission's progress reports on Slovenian and Croatian negotiation processes and by 2) comparing political conditionality and political progress of the countries as stated in the European Council Presidency Conclusions. Time span of the documents' analysis was from the beginning of accession negotiations until the end of negotiations and Signature of the Accession Treaty.

- for Slovenia: from June 1996 until April 2003,
- for Croatia: from October 2005 until December 2011.

The European Commission, through annual opinions and progress reports on the country's ability to assume the obligations of the EU membership, exerts a diplomatic pressure on candidate countries. The Commission's approach to the political conditions has evolved considerably – over time it became more precise, prompted by the need to improve analysis on how political requirements are met, which caused criticisms of the first regular reports in 1998. The lack of clear methodology for objective cross-national comparisons between applicant states and ambiguity in the annual regular reports have been against a background view that the EU is demanding higher political conditions of candidate states when compared to member states (Pridham 2005, 41). Through the comparison of Commission's reports on each country's (Slovenian and Croatian) ability to assume the obligations in subchapter 6.1, I have demonstrated that the conditions of compliance and effectiveness of conditionality were different for Croatia than in earlier cases of political accession conditionality, specifically compared to the case of Slovenia.

European Council plays an important role in EU enlargement policy. After every summit the European Council adopts conclusions containing main directions and priorities of the EU for the upcoming period. By means of a European Council's conclusion I tried to find out if they differ from Commission's reports and tried to confirm the hypothesis with the comparative analyses of conclusions for Slovenia and Croatia. The examination of considerable sources and the awareness of factors affecting the EU enlargement policy and implementation of political conditionality helped to make results more substantiated. European Council Presidency Conclusions show the other source (compared to Commission's reports) of political conditionality of the EU towards the candidate states and will be analysed in subchapter 6.2.

Besides qualitative (substance and context of conditionality) and quantitative (number of times special conditions are mentioned in the primary sources mentioned above) comparative analyses, I used insights and opinions of Slovenian and Croatian politicians and high functionaries involved in the respective negotiation processes. The research method applied in this case are semi-structured interviews. The opinions of decision makers were a valuable resource that made my theses verifiable. On the Croatian side, I held interviews with Minister of Foreign Affairs of Republic of Croatia, Ms. Vesna Pusić and with former Chief negotiator on EU accession for

Croatia, Mr. Vladimir Drobnyak. On the Slovenian side, I held the interviews with the ambassador HE David Brozina and with the high diplomatic source from the Slovenian Ministry of Foreign Affairs, who wanted to stay anonymous.

2 REQUIREMENTS FOR EUROPEAN UNION MEMBERSHIP AND THE *ACQUIS COMMUNAUTAIRE*

With the establishment of the European Community after the Second World War, the European continent after a long time gained the opportunity to develop socially and economically in peace. There is no doubt that the EU, as a key institution that contributes to a democratic consolidation, and promotes human rights, minority protection, conflict prevention and resolution, and boosts stability in the less developed regions, fundamentally transformed Europe's political, economic, social and cultural environment. During its development, the EU had to cope with many problems, not only with instability in its neighbourhood or with post-conflict conditions in Eastern Europe and long and painful transition process in CEEC, but also with great discrepancy in economic and social standards among its members. As Cameron (2002) stated, when compared to EU-15¹⁰ barriers like agriculture, other issues, such as public administration, structural funds, budgets, institutional arrangements were overriding and insurmountable in the 2004 enlargement process.

Until 1993, the only requirement¹¹ for membership in the EU for a country to be a European and democratic. According to Article 237 of the Treaty establishing the European Economic Community,¹² which has been repealed and replaced with Article 49 of the Treaty on European Union, any European country can apply for membership, addressing the membership application

¹⁰ EU-15 refers to the EU composed of 15 member states: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

¹¹ Enlargement is defined by the following articles: Article 237 of the Treaty of Rome, Article O of the Treaty on European Union (Maastricht) and Article 49 of the Treaty on European Union (Amsterdam, Nice, Lisbon)

¹² Treaty establishing the European Economic Community, signed in Rome on 25th March 1957, in force since 1st January 1958.

to the Council.¹³ If a country satisfied this criterion, it could have had the opportunity to become a member and to share basic principles and values of the European Union: democracy, civil society, human rights and the rule of law. As the CEECs have deepened their relations with the EU during the 1990s, the Union took a decisive step towards the enlargement in 2004 and 2007, agreeing that “the associated countries in Central and Eastern Europe that so desire shall become members of the European Union.” Hence, it was no longer a question if there will be the next enlargement, but when it will happen (European Commission 2001).

European treaties are the legal basis for relations between the EU and candidate countries.¹⁴ A legal basis for the enlargement is Article 49 of The Treaty on European Union (TEU). According to it, ‘any European State which respects the principles set out in Article 6(1): “liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law” may apply to become a member of the Union.

Considering membership criteria, European Council in Copenhagen stated that: “Accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required.”¹⁵ As concluded at the same European Council, after 1993 the standard principles covering the enlargement process are based on the following criteria (European Council 1993, pts 7, 13)¹⁶:

- stable institutions that guarantee democracy, the rule of law, human rights and respect for and protection of minorities;
- a functioning market economy, as well as the ability to cope with the pressure of competition and the market forces at work inside the Union;
- the ability to assume the obligations of membership, in particular adherence to the objectives of political, economic and monetary union.

¹³ Treaty on European Union, signed in Maastricht on 7th February 1992, in force since 1st November 1993.

¹⁴ European Community have signed similar agreements in past (Association Agreements) with Turkey (1963), Malta (1970) and Cyprus (1972) (European Union External Action Service).

¹⁵ Conclusions of the Presidency by European Council in Copenhagen, 21–22 June 1993.

¹⁶ Conclusions of the Presidency by European Council in Copenhagen, 21–22 June 1993.

Further adjustments of the principles and requirements were made after two years when Copenhagen criteria were extended in Madrid in a way that accession countries had to provide sufficient legal and administration capacity in order to incorporate the *acquis communautaire*.¹⁷

Finally, the new member states have to adopt the *acquis communautaire*, a set of legal rules which becomes applicable in new member states from the date of their accession. Full membership in the EU according to Whitehead (1996) sets in motion a very complex and profound set of mutual adjustment processes, both within the incipient democracy and in its interactions within the EU, nearly all of which tend to favour democratic consolidation.

It is obvious that the process of European enlargement to the East has become more demanding and more likely to affect acceding countries. This is evident in more demanding conditions the EU proposes to accession countries. Vukadinović and Benett (2011) in their Politics of European Integration contend that different solutions and situations CEECs have been placed to are *inter alia* especially related with estimates made in Brussels. At first glance it is clear that the political motives are dominant and that some countries are valued in accordance with the political needs and desires of the EU and that economic criterion is inferior, they say. Of course, the EU does not guarantee anyone a quick economic levelling nor does it subsidise a dynamic growth, but Romania and Bulgaria with their economies, much weaker than for example, Croatia, entered the EU before it.

There are many examples of the EU's extended and prominent role in CEEC. Pre-accession assistance/programmes usually stand for the first official step towards accession, they build collaboration and reinforce relations between the EU and candidate countries. They cover trade-related issues, political dialogue, legal approximation, and various other areas of cooperation (Rupp 1998). One example of pre-accession assistance is PHARE program, with an annual budget of 1000 million Euros, one of the pre-accession instruments financed by the EU to assist

¹⁷ “While it is important that EC legislation is transposed into national legislation, it is even more important that the legislation is implemented effectively through appropriate administrative and judicial structures. This is a prerequisite of the mutual trust by EU membership.” Conclusions of the Presidency by European Council in Madrid 15-16 December 1995.

the applicant countries of CEE in their preparations for joining the Union (EU Commission 2012).

Kochenov (2005) interpreted that point 13 of The Hague Council communiqué (1969) contains a number of milestone principles of enlargement:

1. Enlargement consists of joining an existing entity, not the creation of a new community;
2. The *acquis communautaire* should be accepted in full;
3. The transitional periods should be strictly limited and cannot contain serious derogations from the Treaty text and the principles on which the Community is built.
4. During the regulation of the enlargement 2004 these three principles were joined by another one: conditionality.

2.1 Political criteria

As mentioned above, at the EU summit in 1993 the EU adopted a list of criteria on which the EU verifies and beholds aspiring countries. The political criteria have to be distinguished from ‘political conditionality’, as indicated above. Political criteria are incorporated in Article 6 of the EU Treaty where it is stated that: ‘the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.’ Furthermore, standard preconditions defined in Article 49 of the EU Treaty specifically bring to mind the rule of law, the principles of democracy and human rights agreed in Copenhagen. According to Laermans and Rooses (2009, 404), the political criteria determines whether a country is eligible for membership, while the other criteria control the speed of the negotiations and of the joining process (*Ibid.*).

2.1.1 Democracy and the rule of law

As mentioned above, democracy and the rule of law have been essential criteria for membership, which was evident from the last two enlargement processes. The importance of democracy was underlined on numerous occasions, being reflected in the preamble to the TEU, in the opinions of

the institutions, and in numerous declarations by the Council, Commission and the European Parliament as well as in the European Court of Justice jurisprudence (Kochenov 2005, 10).

As Kochenov notes, the term 'the rule of law' in the Treaty refers to different national concepts and outlines the necessary level of accomplishment of the national reform demanded from the candidate countries in order to become member of the EU. Main concerns regarding accomplishment of the political criteria are notable in almost every document refereeing to the political criteria. One example is Council Decision on Slovenia in January 2002. Based on this document it is possible to outline five main areas of scrutiny related to the assessment of the 'democracy' and the 'rule of law' criterion (Kochenov 2004, 13):

- elections,
- the functioning of the legislature,
- the functioning of the executive,
- the functioning of the judiciary and
- anti-corruption measures.

Since I did my internship in 2011 in the National Committee for Monitoring the Accession Negotiations of the Republic of Croatia to the EU,¹⁸ I have gathered a lot of insight in the accession process and problems of the new members, especially Croatia. I have analysed the fulfilment of benchmarks in Chapter 23 (Judiciary and Fundamental Rights) and Chapter 8 (Competition Policy) and was included in the preparation of documents regarding Croatian judiciary reforms in the light of EU accession. Currently, I am working in the Public relations department in Croatian government where I often go on meetings and have insight information about Croatian accession process. According to my observations, areas related to the assessment of the Democracy and the Rule of Law were the most complicated areas (among all criteria) for Croatia while negotiating with the Commission. My further questions regarding this include why

¹⁸ The establishment of the National Committee for Monitoring the Accession Negotiations of the Republic of Croatia to the EU resulted from the consensus of all parliamentary political parties that membership of Croatia in the EU was a strategic national objective requiring joint co-operative action of the legislative and executive branch to be ensured within a transparent process of conducting future EU accession negotiations. The National Committee was a special working body of the Croatian Parliament which supervised and evaluated the course of the negotiations, gave opinions and guidelines on behalf of the Croatian Parliament on the prepared negotiating positions, considered information on the negotiation process, considered and gave its views on forthcoming questions on the agenda, analysed and assesses the performance of individual members of the Negotiating Team, and gave opinions, as required, on the harmonisation of Croatian legislation with the EU regulations (Croatian Parliament 2012).

the EU has held so tough to this (political) criterion throughout the years, yet at the same time kept a stronger standpoint on Croatia than on 2004-acceding countries. Hence, are there empirical grounds for differentiating between Slovenia and Croatia, and if so, the aim is to explain these differences by applying abovementioned methods.

2.1.2 Human rights and the protection of minorities

Together with democracy and the rule of law, the path to further democratization in CEEC is the respect of human and minority rights. These requirements were set in the EU's enlargement strategy for CEECs to prevent social exclusion and discrimination in post-communist societies. Regarding human rights, the EU became particularly active in the 1990s with the Maastricht Treaty entering into force. Particular provisions of the treaty gave new impetus for the recognition of political rights through the political integration of the Union (Maastricht Treaty, arts. 8–8e). Explicitly expressed political rights and the EU citizenship introduced changes in human rights policies. Furthermore, the Treaty of Amsterdam strengthened existing provisions on human rights by introducing a set of values on which the EU is founded – “freedom, democracy, respect for human rights and fundamental freedoms and the rule of law” (Treaty of Amsterdam, arts. 6 and 7).¹⁹ As this treaty, inter alia, gave the authority to the European Court of Justice (ECJ) in this field, most authors (e.g. Defeis 2007, Eizaga 2008²⁰) stress the crucial role of the Treaty of Amsterdam in the protection and respect of human rights.

The European Union Charter of Fundamental Rights (legally binding until 2009 entry into force of the Treaty of Lisbon), sets out in a single text, for the first time in the European Union's history, the whole range of civil, political, economic and social rights of European citizens and all persons resident in the EU.²¹ These rights are divided into six sections: Dignity, Freedoms, Equality, Solidarity, Citizens' rights and Justice.

¹⁹ The Amsterdam Treaty, Amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed on 2nd October 1997, entered into force on 1st May.

²⁰ „Since Amsterdam, the ECJ was able to refer to the text of the EU Treaty itself, rather than to unwritten general principles, when protecting fundamental rights (Eizaga 2008, 132)

²¹ Charter of Fundamental Rights of the European Union, signed and proclaimed in 2000, effective as part of the Lisbon Treaty, in force since 1 December 2009.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice (Charter of Fundamental Rights of the European Union, preamble).

Still, the main legal instrument in the protection of human rights in the EU is the European Convention, an international document in force within the scope of European law on human rights as developed by the Council of Europe (Roter and Bojinović 2005). It states that all of its provisions shall be implemented “without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status” (Convention for the Protection of Human Rights and Fundamental Freedoms, Article 14).²²

Even though there is a wide range of possible definitions of the term minority, it is concerning that there is no internationally legally binding definition. Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, gives one possible definition of minority:

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language” (United Nations 2010).²³

Furthermore, the United Nations Minorities Declaration in its article 1 refers to minorities as groups based on national or ethnic, cultural, religious and linguistic identity and emphasizes that States should protect their existence.²⁴

The same situation exists in the EU; the condition of minorities is only stated in accession criteria and political declarations. There is lack of *acquis communautaire* concerning minority rights and protection, even though it is often stressed that it is one of the principles which the EU is founded on. Since the EU has not developed any minority standard to be applied to existing member states

²² Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950 in Rome, entered into force on 3 September 1953.

²³ United Nations. Minority Rights: International Standards and Guidance for Implementation, 2010.

²⁴ United Nations General Assembly Res. 47/135 of 18 December 1992 – Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

so far, there exists a discrepancy between the international and external application of the minority norm by the EU (Schwellnus 2006, 187). Thus, there is no internationally agreed definition as to which groups constitute minorities, but the EU conditions respect of minorities as part of the political criterion for the EU membership. Non-discrimination is generally required as part of the *acquis*, but it is also specifically demanded to address minority problems in certain applicant countries, in particular with regard to Roma population in CEEC (Schwellnus 2006, 195).

2.2. Economic criteria, the ability to assume the obligations of membership and the adjustment of administrative structures

2.2.1 Economic criteria

The existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union are some of the accession criteria that have to be satisfied by the applicant states in order for the European Council to open negotiations. The main aim of European leaders in Copenhagen in 1993 was to establish a functional market economy in acceding countries of CEE, after it became evident that they are interested in joining the EU. Thus, the European Commission monitors and assesses a series of criteria for each of the Copenhagen economic accession criteria (European Commission 2011):

1. Being a functioning market economy requires:

- the existence of a broad consensus about essentials of economic policy;
- macroeconomic stability (including price stability, sustainable public finances and external accounts);
- a free interplay of market forces (including liberalized prices and trade);
- free market entry and exit (including issues of establishment/bankruptcies of firms); and
- an adequate legal system (including a system of property rights, enforceability of laws/contracts) and a sufficiently developed financial sector.

2. Being competitive in the EU requires (European Commission 2011):

- the existence of a functioning market economy;

- sufficient human and physical capital (including issues of education, research and infrastructure);
- adequate sectoral and enterprise structures (including issues of enterprise restructuring, sectoral shift, role of small and medium-sized enterprises);
- limited state influence on competitiveness (including issues of trade policy, competition policy, state aids, support for small and medium-sized enterprises, etc.);
- and sufficient trade and investment integration with the EU.

Croatian scholars Punda, Pečarić and Grčić (the former is current Minister of regional development and EU funds in Croatia) determine the EU economic criteria as subject to “personal judgments”. To assess a functioning of some market economy, one should normally take into account a wide variety of macroeconomic and microeconomic indicators. Even after such due diligence, assessing the readiness of such economy to some extent reflects a subjective judgment. In other words, there is no indication, not even a fully satisfying set of multidimensional indicators that would clearly indicate the existence of the effectiveness of market economy and market factors, the ability to cope with competitive pressure and market forces within the EU (Punda et al. 2006.)

2.2.2 Ability to assume the obligations of membership

EU membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union. The Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries (Conclusions of The European Council Presidency 1993, arts. 7, 13).

In the light of unique event of ten new acceded members in 2004, the EU enlargement exhaustion (also known as enlargement *fatigue*) became a serious problem, and consequently the EU leaders emphasized the importance of the Union's “integration capacity”:

To sustain the integration capacity of the EU the acceding countries must be ready and able to fully assume the obligations of the EU membership and the Union must be able to function effectively after accession. Both of these aspects are essential in ensuring broad and

sustainable public support, which should also be promoted through greater transparency and better communication (Conclusions of The European Council Presidency 2006, arts.1, 2).

In other words, a candidate country must also be able to put the EU rules and procedures into effect but at the same time, the EU's institutions have to function effectively without jeopardizing the other member states.

2.2.3 The adjustment of administrative structures

Fourth accession criterion – a so called Madrid criterion – requires that candidate country creates the prerequisites for integration through the adjustment of its administrative structures. While it is important that the EU legislation is transposed into national legislation, it is even more important that the legislation is implemented effectively through appropriate administrative and judicial structures – a prerequisite of the mutual trust required by EU membership (European Commission 2012).

3 COMPETENCES OF THE MAIN THREE EU INSTITUTIONS IN THE ENLARGEMENT PROCESS

Three institutions are involved in the European system of decision-making, and each of the candidate countries prepares their own positions for the negotiations. The European Commission proposes a common EU negotiating position for each of the chapters under the jurisdiction of the EU. Its Directorate-General for Enlargement (Commissioner for Enlargement and European Neighbourhood Policy Štefan Füle) is in constant contact with the competent public administration body in the candidate country (EnterEurope 2012).

When the country submits an application for membership to the Council, it triggers a complex technical process and a sequence of evaluation procedures (Archick 2012, 4). The Council then asks the Commission to assess the applicant's ability to meet the conditions of membership. Following the Commission's positive opinion and positive unanimous decision by all 27 member

states in the Council of Ministers, negotiations are formally opened between the candidate and all the member states (European Commission 2012).

The accession (negotiation) process enrolls in three phases (Barnes and Barnes 2010). The first one, the application phase, consists of the application or membership being submitted to the Council of the EU (the Council) which then relies on the European Commission (also Commission) to deliver formal (and positive) opinion on application. The final decision on accepting the country's application is on the Council which have to agree unanimously on the start of negotiations. This is only the first stage of the negotiation process. The confirmation of candidate status for an applicant state is a political acknowledgement of a closer relationship between the EU and the candidate state (Barnes and Barnes 2010, 428). Negotiations – the second phase in the negotiation process – begin with the screening of negotiation chapters. Commission then explains *acquis communautaire* to the authorities in the candidate country, from one chapter to the next. The Commission produces a „screening report“, which is the basis for future negotiations. After the conclusion of negotiations, Draft Accession Treaty is submitted for approval to the Council of the EU, the European Commission, and to the European Parliament. This is the final phase of the negotiation process, called ratification. After approval, all member states have to ratify the Treaty according to their respective regulation. The candidate country becomes an EU member after ratification in all countries including the acceding one, on a pre-set date when the Treaty is to enter into force (European Commission 2012).

3.1 Phase one: pre-accession facilities and application of candidate country

The EU has a long standing tradition in concluding trade agreements with many countries in the world. This expands the economic power of the EU worldwide and can be considered as a substitute for the lack of EU political power in the world (Laermans and Rooses 2005). Croatia, as many candidate countries, did not meet criteria for entering the EU when applying for membership. That is the reason why the EU, primarily European Commission, designed pre-accession strategy – to prepare CEEC for the process of negotiations and future membership. Comprehensive pre-accession strategy and its definition was an innovation considering the fact that the similar strategies did not exist during previous enlargement procedures. Pre-accession

strategy was set out at the meeting of the European Council in Essen²⁵ in 1994 and is based on three key elements:

- Implementation of the European treaties,
- PHARE – a program of financial and technical assistance,
- 'Structured dialogue' between member states and candidate countries.

It was practically imposed as a necessity in the fifth wave enlargement due to the large number of candidate countries and encompassing reforms they had to implement in order to become a member of the EU (Hrvatska na putu u Europsku uniju, 2006). The importance of participation of candidate countries in Community programs and agencies in the pre-accession strategy was highlighted on the EU meeting in Luxembourg, as well as the pre-accession strategy for Cyprus and the European strategy for Turkey. The ten CEEC which have entered the EU in 2004 (and Slovenia among them) have signed a Europe Agreement, a treaty which constitutes a framework between candidate country and the EU (European Commission 2012). These agreements were adapted to the specific situation of each partner state and were setting common political, economic and commercial objectives. In the context of accession to the EU, they formed the framework for implementation of the accession process (European Commission 2012). Stabilization and Association Agreements are the new generation of Europe Agreements and they offer similar provisions to the countries of South-eastern Europe. They are part of the of Stabilization and Accession Process and focus on respect for key democratic principles and the core elements at the heart of the EU single market (European Commission 2011).

In 2007, the EU has formulated a new instrument for implementing enlargement – Instrument for Pre-Accession Assistance (IPA) which is combination of the previous programs – Phare, SAPARD and ISPA (Central Finance and Contracting Agency 2012). The IPA program was established by the Council for the period 2007–2013 and is an instrument which consists of five components and offers assistance to countries engaged in the accession process. The main objective of the assistance is therefore to enhance the efficiency and coherence of aid by means of a single framework in order to strengthen institutional capacity, cross-border cooperation, economic and social development and rural development (European Commission 2012). Pre-

²⁵ *Conclusions of the Presidency by European Council in Essen*, 9-10 December 1994.

accession assistance supports the stabilisation and association process of candidate countries and potential candidate countries while respecting their specific features and the processes in which they are engaged. The program has five components: transition assistance and institution building, cross-border cooperation, regional development, human resources development, and rural development (Summaries of EU legislation 2012). Croatia gained access to the PHARE program from 2007 (European Commission 2008).

3.2 Negotiations and ratification

Closure of the Croatian negotiations in June 2011 was followed by the signing of the Accession Treaty in December of the same year, and it meant that Croatia have met all the criteria for the EU membership. It became an Acceding State, and from December is entitled to interim privileges until accession makes it a member state (Negotiations for the Accession to the EU 2006).

Thus, in order to become a member, country has to be ready for the adoption of the whole *acquis communautaire*, i. e. the detailed laws and rules adopted on the basis of the EU's founding treaties, mainly the treaties of Rome, Maastricht, Amsterdam and Nice (European Commission 2005). Negotiations are held between the EU member states and candidate country which draws up its position on each of the 35 chapters of the EU *acquis*. The main purpose of negotiations is that country has to demonstrate ability and capacity to implement and adopt EU law. Chapters are closed – provisionally – only when all the member states are satisfied with the candidate's progress. If Croatia learnt anything about negotiating with the EU, it is definitely that "nothing is agreed until everything is agreed"²⁶ (European Commission 2012). Before any actual negotiation takes place, the Commission undertakes a detailed, systematic presentation and examination of all EU legislation called 'screening'²⁷ so that the candidate country fully understands what is expected and required of it. Then the Commission reports to the Council on the screening of each chapter, and recommends whether to open negotiations on it or to require that certain conditions,

²⁶ Because of the extensive interdependence between different chapters of the *acquis* (European Commission 2012).

²⁷ It enables, firstly, the *Acquis Communautaire* to be explained to applicant countries through a series of multilateral and then bilateral meetings, and, secondly, checks to be made on whether the applicants accept the *acquis* and are able to apply it. It also allows any problems that may arise during the negotiations to be identified (European Parliament 2003).

the so-called opening ‘benchmarks’ - should be met first. The candidate country then submits a negotiating position and the Council²⁸ adopts its common position allowing opening of the negotiations (European Commission 2010). Every six months, the rotating presidency of the Council of Ministers issues a review of the course of the negotiations on the chapters of the *acquis* reached between the Council and the heads of the negotiation process at the level of ministers or their deputies (EnterEurope 2012). The Commission keeps the Council and the European Parliament informed about the achievements in the candidate countries throughout the process of regular reports and strategy papers.²⁹ Commission’s reports will be the main instrument for my analysis: I will ponder and compare all of the Commission’s Progress reports for Croatia and Slovenia. European Parliament has an important role to play in the enlargement process: it must give its assent to the final terms of accession before the Treaty can be signed and ratified (European Parliament 2003). Considering its capacity as one of the two arms of the budgetary authority, it has an important role to play in the financial aspects of enlargement (Ibid).

Once the negotiations for all 35 chapters of the *acquis communautaire* have been concluded, the results of negotiations and all the reached agreements are incorporated in the draft of the Accession Treaty. The national parliaments of the member states and those of the candidate countries have to ratify the Accession Treaty with the future member states once it has been signed following the assent of the EP and approval by the Council (European Parliament 2003).

As can be seen from the above analysis, the EU enlargement is very much a political process; most of the steps on the path to accession require a unanimous agreement of the existing member states. As such, a prospective EU candidate’s relationship or conflicts with individual member states may significantly influence a country’s EU accession prospects and timeline (Archick 2012, 4). It has been the case many times in recent enlargements – especially with Slovenia as acceding country and Italy as member state and also with Croatia as acceding country and Italy and Slovenia as member states.

²⁸ Since the Lisbon Treaty entered into force, in the formulation of General Affairs Council, the Council deals with dossiers that affect more than one of the Union's policies, such as negotiations on EU enlargement (Council of the EU 2012).

²⁹ The constitutional basis for the cooperation between the European Parliament and the Commission is the Framework Agreement on relations between the European Parliament and the Commission, which was signed by the Presidents of the two institutions on 5 July 2000 (European Parliament 2003).

In July 1997 the European Commission presented a document entitled Agenda 2000, with whole range of proposals for strengthening the pre-accession strategy and general perspectives of the enlarged Union (European Commission 2000). Next step was the EU leaders meeting in Luxembourg in December 1997 where they set out the procedure of the negotiations for membership.³⁰ The process of enlargement includes:

- European Conference – a multilateral forum for political consultation with objective to bring together the Member States of the EU and those European countries wishing to become members which share its values and internal and external objectives (European Parliament 2003).
- Accession process – which includes more stages such as pre-accession strategy, negotiations, screening and review process.
- Accession negotiations – started on 31 March 1998 with Cyprus, the Czech Republic, Hungary, Poland and Slovenia on the behalf of the European Council. Malta froze its application for membership in 1996 and returned to the negotiations in October 1998.

4 ANALYSIS OF POLITICAL CONDITIONALITY USE IN THE HISTORY OF EU ENLARGEMENTS

The EU enlargement and the process of cooperation and integration mark an ambitious project in uniting Europe after many years of wars and disintegration. As argued by special rapporteur to the European Commission, Wim Kok, the EU enlargement results from the decision to share the benefits obtained in Western Europe by creating a stable area where war has become impossible and because peace and stability are the main prerequisites for a prosperous economy (Kok 2003, 21).

From the very beginning the EU was open to the possibility of receiving new members, and during the fifty-year-history, Union has expanded six times. The entry of ten new member states

³⁰ Conclusions of the Presidency by European Council in Luxembourg, 12–13 December 1997.

into the EU marked the culmination of a historic process of economic transition that commenced with the fall of Communism in 1989. In the past 30 years, the EU has grown from 6 members with a population of 185 million into an international entity of 15 members with 375 million people (Kok 2003, 21). It is now on the eve of expanding to 28 members with 486 million people.

The European enlargement process began with well known Inner Six,³¹ which were the founding members of the European Coal and Steel Community in 1952. Since then, the EU's membership has grown to 27 with the latest expansion in 2007, to Bulgaria and Romania. The so called 'waves' of the EU enlargement are (European Commission 2012):

- 1973: Denmark, Ireland and United Kingdom,
- 1981: Greece,
- 1986: Portugal and Spain,
- 1995: Austria, Finland and Sweden,
- 2004: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia,
- 2007: Bulgaria and Romania.
- 2013: to be enlargement to Croatia

4.1 Enlargements up to 2004

By the middle of the 1949, much of Western Europe was covered by international organizations, while East European countries under Moscow's control were conspicuous by their absence³² from these new institutions³³ (Archer 2008, 22). In the face of the east – west split in Europe, relations between the EU and United Kingdom (also UK) were rocky, since the main concern of

³¹ Belgium, France, Germany, Italy, Luxembourg and the Netherlands.

³² Absent was also the Federal Republic of Germany – West Germany which had been occupied by the victors of the WWII (Archer 2008, 22).

³³ Council of Europe (COE), The Organisation for European Economic Co-operation (OEEC), The North Atlantic Treaty Organization (NATO).

United Kingdom was to keep US interest and involvement in the continent. After the success of the EC, the US and the UK considered that EC would be complete with British membership (*Ibid*) and UK applied for membership. French President Charles de Gaulle had doubts about UK intentions and the consequences were two vetoes on its membership application – almost eleven years passed by before UK, Ireland and Denmark³⁴ became EEC members (1973).

Over the 80s, EEC membership expanded - Greece, Spain and Portugal (enlargement to the South) unanimously became members. During this period, the Single European Act modified the European Communities (EC) treaties in 1987 to facilitate the creation of the single market, introduced institutional reforms, and increased the powers of the fledgling European Parliament (Archick 2012, 2). The turbulent late 80s and 90s brought major changes – the fall in November 1989 of the Berlin Wall led to a unified Germany, Yugoslavia cracked apart with resulting warfare in 1990, but the EC continued its integration process (Archer 2008, 28). The most unproblematic expansion was the fourth wave of EU enlargement in 1995 in which Austria, Sweden and Finland joined. Those countries made the EU ‘richer’, as all three countries, while being small with populations between 5 and less than 9 million, were among those with the highest GDP per-capita income in Europe; measured by purchasing power parity, exceeded the EU average by a sizeable margin (Breuss 2002, 131).

4.2 Enlargements of 2004 and 2007– emphasis on Slovenia

In the 90s, the EU had to deal with CEEC which were, after years of communism, looking for acceptance in a form of EU membership (Archer 2008, 29). Considering that Slovenia is of vital research interest for this thesis, emphasis will be on its path to the EU, but of course in the context of all ten countries’ EU entrance in 2004.

³⁴ Norway also applied, but after fail of the membership referendum, it withdrew the application.

The 2004 enlargement essentially differs from all the EU accessions in two aspects (McCormick 1999, 1):

1. It was the biggest ever enlargement and for that reason also called the Big Bang Enlargement. For the first time, 10 countries became members of the EU at the same time (instead of one, two or maximum three countries beforehand).
2. *Acquis Communautaire* was much more comprehensive than at the time of the EU's previous enlargement procedures.

The reasons can be found in the fact that in 2004 enlargement accession countries were in the process of economic adaptation and transformation. Similar to Croatia, Slovenia's membership in the EU was one of the primary objectives of Slovenia's foreign policy³⁵ and was supported by all parliamentary parties (Slovenian Government portal "Life in the EU" 2012). The main difference is that even though the two countries shared similar desire for independence and achieved it, Slovenia's politics have been focused on the EU accession even before the break-up of Yugoslavia.³⁶ It was the reason why Slovenia already in 1992 (a year after independence) submitted request to enter the Europe Agreement covering co-operation with the EU in many areas (*Ibid*).³⁷ Between March 1994 and June 1996 the ten countries of Central and East Europe submitted a request for membership, including Slovenia.

Originally this enlargement was divided into two phases: the first wave of accession foreseen for 2003–2006 included six best prepared countries – Cyprus, the Czech Republic, Estonia, Hungary, Poland and Slovenia and started accession negotiations on 31 March 1998. The second wave of countries scheduled to join the EU in 2005–2010 comprised Bulgaria, Latvia, Lithuania, Malta, Romania and the Slovak Republic (Massai 2011, 17).³⁸ The Commission in its opinion in 1997 recommended that negotiations should be opened, with six countries and Slovenia among them.³⁹

³⁵ Slovenian path to the EU results from the Slovenian culture and civilization placement in the Europe, which includes EU and which got term in close political, economic and cultural cooperation with the EU and its institutions and Member States (Declaration on foreign policy of the Republic of Slovenia 1999)

³⁶ Slovenia already in 1989 adopted „Europe 1992 - The overall challenge“, an economic and political program published by the Commission (European Union 2012). Slovenia already in December 1991 issued a kind of foreign policy strategy with the aim of EEC membership (Bojinović 2005).

³⁷ The Europe Agreement with Slovenia was signed in June 1996 and entered into force in February 1999. It took almost 4 years to sign Agreement, longer than any other CEEC, largely because of problems with neighbouring Italy (Government portal „Life in the EU“, European Stability Initiative 2012).

³⁸ Accession negotiations began on 15 February 2000 (Summaries of EU legislation 2012).

³⁹ The Czech Republic, Estonia, Hungary, Poland, Slovenia and Cyprus (*Ibid*).

It stated that Slovenia had a stable democracy and met the political and economic criteria for membership and pointed out that, at the same time, Slovenia would have to make considerable efforts to be able to adopt and implement the *acquis*, particularly in areas like the internal market, environment, employment, social affairs and energy (European Stability Initiative 2009). The candidate countries agreed on the principles and the strategy of the negotiation process. However, negotiations with these ten candidates on remaining issues such as agriculture and regional assistance proved challenging because they rose budgetary and burden-sharing issues (Archick 2012, 3).

The Copenhagen European Council of December 2002 announced that the ten countries (Cyprus, Estonia, Hungary, Poland, the Czech Republic, Slovenia, Latvia, Lithuania, Malta and Slovakia) fulfilled the conditions necessary for joining the EU and were able to conclude accession talks by the end of 2002. They therefore signed their Accession Treaty on 16 April 2003 in Athens and the ten states acceded to the EU on 1 May 2004 after the ratification procedures were completed (Summaries of EU legislation 2012). In its Regular Reports and Strategy Paper adopted on 9 October 2002, the Commission also indicated 2007 as the potential date for accession of Bulgaria and Romania (Massai 2011, 14).

In December 2004, the EU completed accession negotiations with Bulgaria and Romania, despite some continued EU concerns about the status of judicial reforms and anti-corruption efforts in both countries. Bulgaria and Romania formally joined the EU on January 1 2007, bringing the Union to 27 member states (Archick 2012, 3).

4.3 To be enlargement of 2013 – Croatia

Relations between Croatia and the EU were established in January 1992 with the international recognition of Croatia as an independent and sovereign state (Croatian Parliament 2012). Since then, relations were developing progressively and have been intensified from 2000. After six years of negotiations, its results were incorporated in the draft of the Accession Treaty in June 2011 and its signature in December 2011.

Croatia signed the Stabilisation and Association Agreement (SAA) on 29 October 2001 and started official relations with the EU (Delegation of the EU in Croatia 2012). It was the first formal step in the process of the state approaching the EU before submitting the application for full membership, acquiring the candidate status and opening of accession negotiations. The fact that SAA did not enter into force was not an obstacle for Croatian application to the EU membership in February 2003 (Hrvatska na putu u Europsku uniju 2006).⁴⁰ Following the Commission's opinion on Croatian application, European Council in June 2004 recommended that accession negotiations should be opened but with the condition that "Croatia needs to maintain full cooperation with International Criminal Tribunal for the former Yugoslavia (ICTY) and take all necessary steps to ensure that the remaining indictee" (referring to Ante Gotovina) (European Council 2004, 15/ p. 5).⁴¹ After precisely six months, European council decided that accession negotiations could be opened on 17 March 2005, and again emphasised a condition of "full cooperation with ICTY" (European Council 2004, 4). Croatia had to fulfill a new set of requests in addition to the Copenhagen and Madrid criteria – they included elimination of the consequences of war, prosecution of domestic war criminals, the return of refugees, establishment of regional cooperation, and of course full cooperation with the ICTY (Grubiša 2010, 75). In other words, accession talks could begin as soon as full co-operation was established. Thus, I can agree with Schimelfenning (2010) who noticed that it was the first Croatian political conditionality which was highly credible: the ultimate prize of accession negotiations was in reach; compliance on the national identity issue was the last remaining stumbling block; and the EU had demonstrated its resolve to sanction non-compliance.

But then, sudden reversal happened on 3 October 2005, the same day when Carla Del Ponte, (former ICTY war crimes prosecutor) said Croatia is fully cooperating with ICTY, the EU has opened membership talks with Croatia.⁴² The extradition of indictee Gotovina (9 December 2005) was really a controversy. The postponement of accession negotiations was widely

⁴⁰ Croatia was the first country which had a comprehensive program for adjustment to EU standards when applying for membership. The Croatian Government adopted National Programme for Integration into the European Union in 2003, and since then national programs had been developed yearly (Hrvatska na putu u EU 2006).

⁴¹ *Conclusions of the Presidency by European Council in Brussels*, 17-18 June 2004.

⁴² "I can say that, for a few weeks now, Croatia has been co-operating fully with us and is doing everything it can to locate and arrest Ante Gotovina. Since May, the performance of the relevant services has significantly improved. There is no evidence that information has been deliberately hidden from us or from other relevant Croatian agencies." Carla Del Ponte, BBC news. October 3rd 2005.

perceived as unjust and almost 80 % Croatians saw Gotovina as a war hero and with the mass protests opposed delivering him to The Hague tribunal (Eurobarometer 2005).⁴³ However, General Gotovina was arrested on the Spanish islands Tenerife on 7 December 2005 and brought before the ICTY, which confirmed Del Ponte's positive assessment of Croatian full cooperation in October 2005. The postponement of accession negotiations also demonstrated that the EU was serious about its preconditions and persuaded the government to comply with an unpopular demand in a constellation of strong identification with the EU, moderate costs to the government, and high incentives in close reach (Schimelfenning 2008, 929).

Analytical Screening of the Croatian legislation began after the opening of negotiations in autumn 2005 and was completed on 18 October 2006. It was conducted by the EU representatives in the European Commission and a working group for the preparation of negotiations on individual chapters and representatives of government bodies. This is the reason why negotiations are often considered as a process of candidate country's adjustment of political, legal, economic and social system of the EU. After the screening, negotiations on each chapter are opened. How fast a country would accept, implement and carry out the *acquis* in specific areas results in the timing of each chapter's closure. However, because the EU encountered a problem of corruption and political corruption during the accession process of the ten transition countries to the EU, the result was that at the opening of each of the 33 negotiation chapters (35 in all - 4 more than the usual 31) Croatia received additional benchmarks, including, as a special benchmark in the fight against corruption, the urgent need to adopt an overall anti-corruption program and strategy for combating corruption (Grubiša 2010, 69). The long-lasting EU accession negotiations with Croatia resulted in a new, new generation of conditionality principles with regard to membership, also referred to as benchmarks. Grubiša (2010, 91) argues that the experience and practice of these negotiations will be instructive to other countries in the region aspiring to EU membership.

⁴³ Eurobarometer no. 64. Fall 2005. *Public opinion in the EU: National Report Croatia*.

5 PARTIAL CONCLUSION: POLITICAL CONDITIONALITY IN THE EUROPEAN UNION ENLARGEMENT

The belief that the EU is the prime benefactor of new democracies in Europe is widely held in EU institutions and among governments and parties of member states as well among political and economic elites in states seeking admission to the EU (Pridham 2005, 1). Political conditionality has often been subjected to a systematic and theory-oriented analysis and was generally described as the EU's impact on democracy, rule of law and human rights in the aspiring or acceding countries. These are the core conditions that states have to fulfil before they are allowed to enter accession negotiations and are expected to adopt the specific rules of the *acquis communautaire*. In other words, political conditionality is the core strategy of the EU to promote these fundamental rules (Schimmelfenning and Sedelmeier 2005, 29). The EU policy in CEEC, described as predominantly a policy of conditionality (Schimmelfenning and Sedelmeier 2005, 30), raises many pertinent questions which have to be answered. To pursue these further, I first consider various aspects of political conditionality, as an introduction to discussing its use by the EU in cases of Croatian and Slovenian accession processes.

The present conditionality rules take the membership requirements beyond the rather vague 1993 Copenhagen Criteria and make them more specific in terms of the actions that are required of the aspiring members. The process has built within its incentives such as enhanced funding to implement change and the ultimate prize of membership.

Many of the authors agree that conditionality has always been incorporated in the EC and EU policies, in one way or another. However, it was surely systematically activated in the period of 1997–1998 when the Commission stated its *avis* on the applicant states and its first annual Regular Report on progress with conditionality. Before the fall of communism, the EC lacked procedures and continued with tendency to “react to events” rather than trying to determine their outcome (Pridham 2005, 35). The legal basis for conditionality lies in treaties adopted in Maastricht, Amsterdam and Nice that stressed promotion of democracy and especially respect of human rights. On the background of Single European Act and empowered EU institutions, primarily European Commission, the Treaty of Maastricht included respect for human rights,

which is one of the fundamental principles of the EU, and as stated in Article F “as they result from the constitutional traditions common to the member states”.⁴⁴

However, it was the Amsterdam Treaty which first really ‘gave bite’ to the EU’s role in this area, represented qualitative jump in conditionality and gave new procedure in dealing with the breach of the EU principles (Pridham 2005, 36). The Maastricht regulation that the EU was “founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which are common to all member states” and call for “more effective action” and encountering with all types of discrimination was further strengthened.⁴⁵ It deepened the commitment for fundamental rights protection within the Community, and strengthened the role of the Luxembourg Court on this matter (Eizaga 2008, 132).

Anastasakis (2008) noticed that the significance of the EU’s conditionality increased when post-communist CEEC became the first target of a demanding political, economic and social conditionality. As mentioned above, democracy, rule of law, judiciary and other new requirements were added in treaties and *acquis* for aspiring member states. As stated in Schimmelfennig and Scholtz’ article (2007), of all transnational concepts, conditionality is the most suggestive of all efforts to determine from outside the course and outcome of regime change, excepting of course ‘control’ through foreign occupation. Furthermore, the authors operationalize conditionality and argue that conditionality is achieved by specifying (pre-) conditions for support, involving either a promise of material aid or political opportunities. It usually requires political monitoring of domestic developments in the countries under discussion. All authors agree that it is the EU that is the most associated with political conditionality since the prize is no less than eventual membership for compliant new democracies. Pridham (2005, 42) argues that the content of EU’s democratic conditionality⁴⁶ has certainly broadened in scope in comparison with the South European accessions. Furthermore, he argues that conditionality has moved decisively from the then essentially formal criteria concentrating on institutional

⁴⁴ The Maastricht Treaty - Provisions amending the Treaty establishing the European economic community with a view of establishing the European Community, signed on 7 February 1992, entered into force on 1 November 1993.

⁴⁵ The Amsterdam Treaty - Amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts signed on 2 October 1997, entered into force on 1 May.

⁴⁶The concept ‘democratic conditionality’ refers to conditionality of criteria under the ‘democracy and the rule of law’.

matters, to start embracing areas of substantive democracy involving political matters. He differentiates between two concepts – conditionality and convergence, which tend to point towards democratic consolidation and provide a notional means for exploring interactions between external effects and domestic developments. Hence, while convergence has its gradual and mildly intensifying pressures, conditionality plays along in a more immediate way and adds sharpness to the prospects of convergence (Ibid.). According to Scholtz and Schimmelfenning (2007, 5) the most general political conditionality hypothesis is that the positive impact of the EU on democracy in outsider states increases with the size and the credibility of the EU's conditional incentives. According to Hughes *et al.* (2004, 25) conditionality is a “gate-keeping mechanism embodying clearly identifiable and generally understood norms, rules and institutional configurations that are applied consistently and with some continuity over time to regulate the entry of new members.”

It is clear that the bilateral relations between individual candidate countries and the EU member states affect the development of the principle of conditionality. The problems that arise in a given bilateral relationship can have a significant impact on the creation of conditions for membership, especially if a member state succeeds in translating it into legitimate European problem which can easily become EU membership condition (Mehikič 2007, 22). I can agree with observation by Mehikič (2007, 11) that political conditionality is not a static instrument but is constantly changing and is of course affected by the EU enlargement process. The author also raises the important question for my thesis: whether the principle of conditionality really develops in a way which treats equally all the applicant countries and that increasing demands only result from the differences in the starting position of each candidate or is conditionality primarily based on selfish interests of individual member states? (Ibid).

Schimmelfenning in his “EU political accession conditionality” (2008) examined whether the EU's political accession conditionality and the conditions of its impact have changed in recent years, and does the EU still link its progress toward accession consistently or does it discriminate against countries which still remain outside the Union. Using annual ratings by Freedom House, he analysed discrimination and eligibility in the EU enlargement, and in his conclusion he contended that recent drawbacks in eastern enlargement (Croatia, Serbia and Turkey) have to do

with a particular set of EU conditions that are related to specific historical legacies of ethnic conflict in these countries. In the case of full cooperation with ICTY, Schimmelfenning argues that it can be justified as an important step toward democratic consolidation, and that such problems simply did not exist in the countries which joined in 2004 and in 2007. Finally, his analysis found no negative discrimination of eligible countries. At the same time, Kochenov in a similar research stated that the enlargement process suffered because of ambiguity of the meaning and vagueness of the Copenhagen criteria and that the fifth enlargement (in 2004) did not really become a merit-based process (Kochenov 2004). In searching for reasons for this he argues that the Commission failed its task to make the Regular Reports on preparedness to the accession full and impartial. With a wording so broad and over inclusive, neither the candidate countries nor the Commission really knew how to apply Copenhagen criteria in practice. Kochenov (2004, 23) harshly concludes that the general uncertainty about the meaning and the scope of the criteria resulted in a situation when the preparation to enlargement could be compared at a certain point to a game of guesses. Despite the fact that the Commission in 2004 stated (Strategy Paper of the European Commission 2004) that the political criteria were largely respected, Cameron (2002, 127) noticed that it is stated in the Agenda 2000 that all the candidates fell short both of the economic criteria and the capacity to take on and apply the *acquis* effectively.

With some opponent views from prominent authors on the use of conditionality, the goal of this thesis is to show whether the EU's political conditionality has really changed in recent years and to find out if recent problems in accession conditionality are caused by a change in the EU policy or could they be attributed to (initial) unfavorable domestic conditions in the accession countries. More accurately, I will try to find out if and why the fulfilment of Copenhagen political criteria differed in the process of accession of countries in 2004 in case of Slovenia and in case of Croatia.

Political conditionality can be classified in a two manners: positive and negative conditionality.⁴⁷ In the next chapter, I used the notion 'negative conditionality' as a pattern of conditionality appliance when countries fail to meet the criteria – they are denied assistance, association or

⁴⁷ Political conditionality can be classified in a variety of manners except the above mentioned: for example, definite and ambiguous conditionality, legal and informal conditionality and etc (Zuokui 2010).

membership, and are left behind in the competition to be rewarded (Shimmelfening and Sedelmeier 2005, 5).

6 COMPARATIVE ANALYSIS OF POLITICAL CONDITIONALITY IN THE PROCESS OF THE EU ENLARGEMENT OF SLOVENIA AND CROATIA

A number of questions can be asked about the use of political criteria and political conditionality in the recent EU enlargement processes. Among these is whether European Commission and the European Council implemented political conditionality as interpretation of political criteria for EU accession towards Croatia more meticulously than towards Slovenia? More accurately, did the EU pay attention to the same issues and in the same degree of details when applying Copenhagen political criteria to Croatian and Slovenian accession? Finally, can the reasons for the abovementioned be found in different assessment of the two states' starting points in the process of accession negotiations?

6.1. Comparative analysis of the Commission's Progress Reports on Slovenia and Croatia

Progress Reports are the means by which the European Commission exerts diplomatic pressure on candidate countries through their ability to assume the obligations of EU membership. Many of the Progress Reports caused criticism in Croatia and that was almost the general viewpoint.⁴⁸ A good example is the loud voices which were heard in Croatia in 2005, including those by intellectuals and the informed public, arguing that Croatia should not surrender and let go of the individuals who had helped to defend the country during the war (Roter and Bojinović 2005) referring to the extradition of war-crimes indictee Ante Gotovina. The assessment of domestic (Croatian) representatives is that Croatia's path to the EU was difficult, perhaps the most difficult of all the countries so far, Croatian Prime Minister Zoran Milanović said during a recent visit to

⁴⁸ Kolinda Grabar Kitarović, former Croatian Minister of Foreign Affairs claimed for the Croatian leading daily newspaper that »The EU is the most restrictive towards Croatia. The criteria may be the same, but the implementation is tightened and more intense. Formalized, rigorous, detailed and comprehensive standards in negotiations are the rule, and not the exception« Jutarnji list (2007).

German Chancellor Angela Merkel in Berlin (Jutarnji list 2012). This was the main reason why I decided to examine whether the EU really implemented political conditionality towards Croatia more meticulously than toward Slovenia. The discussion in this section aims at elaborating the Commission's Progress Reports through quantitative analysis, whilst analyzing them through theoretical arguments.

Before the analysis of Progress Reports, my interest is also in the starting point of the two states, as assessed by the Commission. Thus, I firstly analysed the content of Commission's opinions on Slovenian and Croatian membership in the EU and compared them. In Commission's opinion on Slovenia's application for membership (1997) political criteria were assessed on 6,5 pages (pp. 13–20), compared to the Commission's opinion on Croatia's application for membership (2004), where the political criteria were analyzed on 26 pages (pp. 11–37); the discrepancy in the scope is obvious. Regarding the content of Commission's opinions, it is very indicative that the subdivision *Minority rights, protection of minorities and refugees* in Croatian opinion (p. 24) was analyzed by the Commission in greater detail compared to Slovenian opinion (p. 20).⁴⁹ Besides the qualitative data that can be found in both opinions, additional issues considering minorities are analyzed only in opinion for Croatia: culture, educational institutions, Ombudsman's role, the representation in state administrative and judicial bodies, minority representation in parliamentary elections and in the state administrative and judicial bodies, their representation in media, number of cases pending in the European Court for Human Rights against Croatia (pp. 24–29). Table 6.2 acknowledges the irrefutable differences in interpretation of the political criteria between the two countries even more explicitly (see below). Another essential difference in starting positions is the fact that in the case of Slovenia negotiating chapter 23 did not even exist (Judiciary and Fundamental Rights), which was very substantial and conditional for Croatia.

Table 6.1 sheds some new although not entirely surprising light on the Commission's application of political conditionality: Croatia is mentioned in Progress Reports disproportionately many times more compared to Slovenia. What is also seen at first sight from the comparison of Croatian and Slovenian Progress Reports is an obvious discrepancy in the scope and the amount

⁴⁹ Only 3 paragraphs in the Commission's opinion for Slovenia, but 5 pages for the same political criteria (plus refugees) in the Commission's opinion for Croatia.

of information that they contain. In fact, all the areas that the Commission tackled in those Reports were at least two times more detailed in the case of Croatia than they were in the case of Slovenia.

As political criteria are relevant for this study, I tried to find a way to compare the two countries and consequently confirm or refute the first hypothesis of this master thesis. The literature that compares the two countries based on political criteria and/or conditionality contains some interesting examples.⁵⁰ Similarly, I counted the number of times the phrase ‘political criteria’ was mentioned in each progress report, i.e. for each year for each country (taking the year of the start of the accession negotiations as the first year and the year of the signing of the Accession Treaty as the last). From Table 6.1, it is evident that in the case of Croatia the Commission used the term ‘political criteria’ 60 times in the period from 2005 to 2011. In the case of Slovenia the phrase was used only 41 times, which is a significantly (32 %) lower number. The highest difference appears in the first two years after the start of the accession negotiations, when ‘political criteria’ for Slovenia is mentioned 4 times (both years), and for Croatia 12 and 10 times per year.

Table 6.1: Analysis of the Commission's Progress Reports on Slovenia and Croatia – political criteria

Slovenia		Croatia	
Year	Reference	Year	Reference
1997	4	2005	12
1998	4	2006	10
1999	5	2007	7
2000	9	2008	9
2001	10	2009	8
2002	9	2010	7
2003	0	2011	7
TOTAL	41		60

⁵⁰ One of them is Maki (2008) who explores the development of political conditionality by comparing Croatia and Serbia.

‘Reference’ stands for the number of times the phrase ‘political criteria’ was mentioned in the European Commission’s Progress Report that year.

Source: own creation.

Furthermore, given that minorities as a political criterion are particularly interesting to the analysed research problem and also relevant in the comparison of these two countries, I compared the use of the phrase "minority/ies" in the same way. In this case, the figures were even more incredible – in the progress reports on Croatia the Commission mentioned the topic of minorities 300% more times (356) than in the progress reports on Slovenia (111).

Table 6.2: Analysis of the Commission's Progress Reports on Slovenia and Croatia – minorities

Slovenia		Croatia	
Year	Reference	Year	Reference
1997	23	2005	86
1998	14	2006	46
1999	8	2007	36
2000	9	2008	39
2001	24	2009	50
2002	33	2010	51
2003	0	2011	48
TOTAL	111		356

‘Reference’ stands for the number of times the phrase ‘minority’ or ‘minorities’ was mentioned in the European Commission’s Progress Report that year.

Source: own creation.

In order to cover the political conditionality analyses substantially, and not only quantitatively, I compared the content of penultimate Progress Reports of target countries. Thus, in its Progress Report on Slovenian membership one year before the closure of negotiations (2002), the Commission noted only few areas (in the political criteria) where Slovenia needs more significant

progress. Commission was concerned over court backlogs,⁵¹ over the integration of recognised refugees into society⁵² and over the protection of civil and political rights.⁵³ In the last Progress Report before the Croatian closure of negotiation (2010), Commission stated that Croatia had made good progress on judiciary and fundamental rights, but enumerated the following nine areas of further progress needed only in relevance to political criteria (European Commission 2010, pp. 6-17):

- judicial reform remains a major undertaking and significant challenges remain, especially relating to judicial efficiency, independence and accountability;
- protection of fundamental rights has been strengthened but needs to be improved in practice, especially for minorities and refugees;
- the attention needs to be paid to integrating persons granted protection in Croatia and to protecting minors among irregular migrants;
- the infrastructure and equipment of courts, including case management systems, remains underdeveloped;
- impunity for war crimes remains a problem;
- further coordination and pro-active follow-up of implementation of anti corruption sector issues are needed;
- a culture of political accountability for the corruption cases which are coming to light is lacking;
- preventive measures such as improved transparency in public spending need to be strengthened;
- enforcement of human rights continues to be compromised by the persisting shortcomings in administration of justice, especially the length of proceedings.

According to the data and its analysis presented above, i. e. the qualitative and quantitative difference in the initial assessment of the two applicant states and the quantitative analysis of the use of political criteria and minority/ies terms in Commissions' Progress Reports, which all show

⁵¹ No reduction in court backlogs was achieved last year, despite the measures introduced by the Government. Although the number of pending court cases decreased slightly, the number of backlog cases has further increased. (European Commission 2002, 22).

⁵² Furthermore, the integration of recognised refugees into society should be improved (European Commission 2002, 25)

⁵³ Additional steps have been taken to further improve the protection of civil and political rights, but some issues continue to merit attention (European Commission 2002, 25).

higher numbers for Croatia than for Slovenia, including a special Chapter invented for Croatia regarding the respect of political criteria (Judiciary and Fundamental Rights), there should be no doubts regarding the favourable argumentation of the thesis that Commission's implementation of political conditionality toward Croatia was more meticulous than towards Slovenia.

6.2 Comparative analysis of the European Council's conclusions

From the conclusions of the European Council it was also evident that Croatia got a lot more 'text space' than Slovenia, but also a lot more than all the other countries in the 2004 enlargement in general. What was useful to compare in those conclusions was how many times a particular country was mentioned, and in what context. Again, taking the time span from 1996 to 2003 for Slovenia, and from 2004 to 2011 for Croatia, it was evident that 'Croatia' was mentioned 12 times, and 'Slovenia' 14 times. This does not represent a big difference in the figures themselves, but the content of the conclusions were more extensive in the case of Croatia than in the case of Presidency Conclusions regarding the countries in the 2004 enlargement, and the context in which it is mentioned is quite different as well. From Table 6.3 below it is seen that the Council used negative political conditionality four times in the case of Croatia, while not once in the case of Slovenia. The ratio between the positive contexts in which each country was mentioned is significant: nine in the case of Slovenia and only two in the case of Croatia.

Table 6.3: Analysis of the European Council's conclusions

Slovenia				
Year	Reference	X	Y	Z
1996	1	0	1	0
1997	1	0	0	1
1998	1	0	1	0
1999	2	0	2	0
2000	3	0	2	1
2001	1	0	0	1
2002	4	0	3	1
2003	1	0	0	1
Total	14	0	9	5

Croatia				
Year	Reference	X	Y	Z
2005	0	0	0	0
2006	5	0	0	5
2007	0	0	0	0
2008	0	0	0	0
2009	0	0	0	0
2010	0	0	0	0
2011	7	4	2	1
Total	12	4	2	6

‘Reference’ stands for the number of times the country in question was mentioned in the European Council Conclusions that year.

‘X’ refers to the number of times the negative conditionality was used that year.

‘Y’ shows the number of times the country was mentioned in a positive context that year.

‘Z’ refers to neutral mentioning.

Source: Own creation.

Thus, Croatia was mentioned in the context of “further reforms needed”, “full cooperation with the ICTY,” “take necessary steps” four times in the Conclusions of the European Council, while this method was not used even once in the Slovenian enlargement of 2004.

In the Council’s Conclusion (2011, 12) the political conditionality is expressed in the way of negative conditionality on membership. Besides the explanation that the “ongoing examination is being conducted in full respect of strict conditionality and in line with the negotiating framework”, the Council mentions the monitoring up to accession as the “necessary assurance to Croatia and current member states” (*Ibid.*). The Council concludes the paragraph with the warning that it may, “acting by qualified majority on a proposal from the Commission, take all appropriate measures” (*Ibid.*).

Conclusively, the data from Tables 6.1, 6.2 and 6.3 present sufficient empirical ground to confirm the first thesis of my study: the European Commission and the European Council implemented political conditionality as an interpretation of political criteria for EU accession more meticulously towards Croatia than towards Slovenia. From the above analysis I am also able to conclude, that the negotiations with Slovenia and Croatia were highly different as far as political conditionality is concerned, but in the analysis of why this was so, one should include the context in which the particular country was situated in a given period. Now that I have confirmed the first hypothesis, the question that I need to answer next in order to confirm or refute the second hypothesis is: Was the above mentioned differentiation between Slovenia and Croatia implemented due to the different assessment of the two states' starting points in the process of

accession negotiations? A more detailed interpretation of factors and circumstances which brought to this discrepancy is needed and I will focus on that in the next part (subchapter 6.3).

6.3. Comparison of the countries on the basis of data obtained from interviews

Many authors (Jacobsen 1997; Cameron 2004; Roter and Bojinović 2005; Schimmelfenning 2008) agree that the EU enlargement to the CEEC in 2004 is not comparable with the previous enlargements for several reasons – previous enlargements affected only the quantity (the number of states), whereas the integration of the CEEC can be viewed as a qualitative change due to the fact that not only were the systems of the acceding countries transformed, but also the EU was faced with a whole range of economic, financial and political problems during the enlargement process itself (Jacobsen, 1997). Kochenov (2005, 2) notes that the 2004 enlargement contributed to widening the gap between the enlargement routine and the way enlargements are regulated by TEU to a scale unknown before, and that the countries, due to "the nature of the majority of the Applicant States", had to deal with the full development of legal and economic structures on the remnants of the communist past. Consequently, and predictably, Roter and Bojinovic (2005) conclude that it is not necessary to invest a lot of effort in order to notice that countries wishing to join the EU after the 2004 enlargement are under more rigorous scrutiny and that it seems the Copenhagen criteria are more stringently applied than in 2004. Besides that, the Czech Republic, Hungary, Slovakia and Slovenia were all plagued by a multitude of problems that have so far largely prevented the legislation from being realised in practice (Falkner and Treib 2007, 10). Vachudova (2005) argues that however unintended, the big enlargement to ten states in 2004 was not particularly surprising: European integration has from its inception evolved in response to external pressures and shocks, without a long-term plan or a clearly defined goal. Thus, I argue that the Commission, considering the knowledge and experience it gained during conducting the last two enlargements and being the leading EU institution involved in negotiation process and considering the fact that some of the countries arguably still (as EU members?) fail to comply with the Copenhagen political criteria, such as minority protection (Roter and Bojinović 2005), indeed had assessed candidate states as having different starting points, not only on the basis of their de facto historical differences but also due to the immediate experience with the previous two CEEC enlargements.

The opinions of decision makers were a valuable resource that made the above question verifiable. On the Croatian side, I held interviews with Minister of Foreign Affairs of the Republic of Croatia, Ms. Vesna Pusić and with former Chief negotiator on EU accession for Croatia and current Ambassador to the Croatian Mission to the EU, Mr. Vladimir Drobnjak. On the Slovenian side, I held interviews with the Minister Plenipotentiary of the Republic of Slovenia to the Republic of Bosnia, David Brozina,⁵⁴ and with one anonymous diplomatic source from the Slovenian Ministry of Foreign Affairs (MFA).

Considering the possible different interpretation of political criteria, Minister Pusić (2012) stated that the Commission, aware of the issues⁵⁵ after 2004 and 2007 enlargements, improved or hardened the political criteria for the candidate countries, to ensure their fulfilment before any new accessions. It is a fact that the accession negotiation with Croatia have been made according to the newly formed set of benchmarks, the newly established negotiating chapters, with special emphasis being put on the chapters dealing with rule of law and fulfilment of political criteria. Furthermore, Pusić argues that the enlargement of ten, which included Slovenia, started and finished in different circumstances for the EU itself⁵⁶ and therefore agrees that the starting point of the two states was interpreted differently and that thus political criteria were heavily in the spotlight for Croatia (*Ibid*).

The high diplomatic source from the Slovenian MFA agrees with the thesis on different starting points of the two states in the negotiation process: The difference between Croatia and Slovenia is basically the difference between Croatia and all other CEEC which were politically seen as a

⁵⁴ David Brozina was the II. Secretary at the Permanent Representation of Slovenia in Brussels, responsible for the coordination of Coreper II. Afterwards, he worked at the European Commission as a national expert in the Directorate-General for Freedom, Security and Justice, where he was responsible for institutional relations.

⁵⁵ After the big enlargement of ten CEEC, followed by Bulgaria and Romania, the old member states faced challenges with the state of judiciary, civil rights, status of minorities in the new member states (Pusić 2012).

⁵⁶ During the accession of Slovenia, the enlargement was celebrated as the widening of European values and ideas to the East, while Croatian accession started in the phase of criticism and scepticism towards future enlargement, mostly coming as a shock from the big bang of 10+2 new member states. Being mostly economically oriented in pre-accession conditions, the EU subsequently faced challenges with the political criteria of its new members. Croatia came as a next applicant, not only in those circumstances, but also as the only post-conflict country joining the EU. Even the start of the Croatian negotiations was politically conditioned (*Ibid*).

one group. Moreover, s/he argues that the starting position in every enlargement is a result of the time and specific situation in which the candidate country is situated.⁵⁷

Former Chief Negotiator for Croatia and current Ambassador to the Croatian Mission to the EU, Vladimir Drobnyak, contends that it is an indisputable fact that the political criteria in the process of Croatia's accession were significantly more stringent than in the case of Slovenia. Minister Plenipotentiary Brozina has a similar opinion and adds that in such a broad definition of what should be evaluated as the political criteria for EU accession, it is possible that the Commission or member states had emphasized different problem in each country's accession.

From the data retrieved from the conducted interviews, I can also make conclusions on the reasons/causes why Croatian starting position was interpreted as more difficult than Slovenian. The first factor exposed by the interviewees was the 'constitutional crisis' of the Union, caused by the failed referendums on the Constitutional Treaty in France and the Netherlands in 2005, which resulted in significant changes in the circumstances within which the accession negotiations took place. Furthermore, an important factor was identified as the enlargement fatigue that emerged after substantial changes to the configuration of the Council from 15 to 25 and then to 27 member states. It is a well-known and frequently mentioned phenomenon (Pridham 2005; Mehikić 2007; DeBardeleben 2008; Schimmelfenning 2008) of overload and dissatisfaction of EU citizens, which appeared in part due to lack of information and dialogue by the EU.

Furthermore, an important difference between Slovenia and Croatia regarding the application of political criteria in terms of political conditionality is the cooperation with the ICTY. The ICTY used Croatia's path to the EU in order for Croatia to establish better cooperation with it.⁵⁸ Formally, Slovenia also became independent, but its independence war was short, so Slovenia – as opposed to Croatia – did not have the 'status' of a post-conflict country in the process of EU

⁵⁷ If one compares the enlargement of 1995 with the one in 2004, one can easily see that the lack of economic development in many fields in the CEEC made starting point for them much more difficult than for Austria, Finland and Sweden (Slovenian MFA 2012).

⁵⁸ "Delaying the start of the negotiations on full membership (by decisions taken in the EU institutions) prompted criticism in Croatia because the extradition of any defendant to the Hague tribunal for the punishment of crimes committed during the war in the former Yugoslavia cannot be placed on the same plane as the historic step of a state - membership in the European Union" (Rudolf 2005).

negotiations. A direct consequence, what the EU was insisting on was full cooperation with the ICTY, on addressing the issue of the return of the refugees and the development of regional cooperation with an emphasis on reconciliation, which had not been an accession condition before. Thus, Croatia had to become a reference state for the other Western Balkan countries. Each enlargement is special in its own way, but only the Croatian one can be called 'unique' (Drobnjak and Pusić 2012), primarily for two important reasons:

- 1) Lengthy negotiations have produced new methodologies of membership conditionality and those are benchmarks.
- 2) Due to the introduction of Chapter 23 (Judiciary and Fundamental Rights) – the difference in the political criteria of the Croatian enlargement compared to the previous ones is best seen by analyzing the content of Chapter 23.

A factor that was particularly stressed by the interlocutors of the interview was the fact that Croatia negotiated alone, while Slovenia negotiated as part of a group, so I will discuss this fact further. Mr. Drobnjak stressed that Croatia was not in a position to negotiate in parallel with a few similar countries, as Slovakia had Hungary, the Czech Republic and Slovenia, with which it could discuss possible solutions, form a united front and develop a common approach. Pridham (2005) argues that the entire burden of accession also left less room for manoeuvring within the EU itself, and on the other hand, it intensified the fears of the CEEC from possible consequences of accession delay, and thus their ability to sustain the momentum and consensus during this 'ride'. According to Jacobsen (1997), it was almost as if there was a competition between the CEEC on which one of them will meet the accession criteria faster and better. I can absolutely agree with the following quotes of interviewees: "When one is alone, one cannot generate the amount of positive pressure that in other circumstances one could. Retrospectively speaking, I think it is easier to negotiate in a group with other countries than alone" (Drobnjak 2012). "All the evaluations of Croatia were made in relation to the ideal state for the EU. The worst is when you negotiate alone" (Brozina 2012).

The last important, if not the most important factor, is the accession of Romania and Bulgaria in 2007. After the difficulties experienced in the 2004 enlargement, many people wondered whether

Bulgaria and Romania really were ready to integrate into the EU.⁵⁹ Despite many comprehensive preparations in both countries which had more serious problems than the countries of the 2004 enlargement, the Commission expressed concern in the Progress Report only a year before of their accession: "The Commission identifies a number of areas of continuing concern, and also areas where the Commission will initiate appropriate measures to ensure the proper functioning of the EU, unless the countries take immediate corrective action" (European Commission 2006).⁶⁰ All four interlocutors agree (except the high diplomatic source from Slovenian MFA⁶¹) that the Bulgarian and Romanian accession was the important cause for the Croatian accession negotiations to take the course they did. Thus, the EU past experience was reflected not only in the content of the negotiations, but also in the procedures of negotiating, the form and substance of documents, the number of chapters and benchmarks in the process, as well as the detailed approach in monitoring progress of each individual chapter, not only in terms of adopting legal, but also in organizational and administrative standards.

7 CONCLUSION

This study aimed to analyze the application of political conditionality through the implementation of the political criteria in the case of Slovenian and Croatian accession to the EU. Changes that have occurred in recent years in the area of EU enlargement are enormous and unseen before. With the number of member states that rose from seven in 1952 to 28 in 2013, the range of conditions that a state must fulfil in order to become a member, extended as well. The Copenhagen criteria are their backbone because they represent the codification of all the instruments that had regulated EU expansion up to 2004. They determine not only the date of entry, but also the start of the negotiations and the tempo of their opening and closing. The political (Copenhagen) criteria played an important, if not the most important role in the Croatian

⁵⁹ "Bulgaria and Romania are not ready. Although their economies are growing fast (by 7% in Romania, 6% in Bulgaria), both are poor, with incomes around one-third of the EU average--less than any of the eight other ex-communist countries that joined in May 2004. Both countries are poor in public spirit as well. Officials tend to be badly trained, ill-paid and often corrupt. For health care, bribes are routine." (The Economist 2006).

⁶⁰ "There has been some progress in the areas of judicial reform and the fight against corruption, money-laundering and organised crime, but further tangible results are needed." (European Commission 2006, 12).

"A number of important issues still need further improvement" (European Commission 2006, 17).

⁶¹ I believe that there is no connection between Croatian progress and the fact that "some of the countries still fail to comply with the Copenhagen political criteria". Also, I argue that 'enlargement fatigue' did not apply to Croatia, but will rather to future applicants (High diplomatic source from Slovenian MFA 2012).

negotiations – Croatia's failure to meet those criteria resulted in postponing the accession talks. In the thesis I tried to determine whether the political conditionality as an interpretation of the political criteria by the Commission and the European Council really applied differently to Croatia than to Slovenia.

Through the comparative analyses of the Commission's Progress Reports, I concluded the following: there is an obvious discrepancy in the scope and the amount of information they contain and each political criterion in case of Croatia was assessed in great detail when comparing to Slovenian, especially the issue of minority protection and judiciary. According to the data and its analysis presented above, i. e. the qualitative and quantitative difference in the initial assessment of the two applicant states and the quantitative analysis of the use of political criteria and minority/ies terms in Commissions' Progress Reports, which all show higher numbers for Croatia than for Slovenia, including a special Chapter invented for Croatia regarding the respect of political criteria (Judiciary and Fundamental Rights), there should be no doubts regarding the favourable argumentation of the thesis that Commission's implementation of political conditionality toward Croatia was more meticulous than towards Slovenia. The similar conclusion arises from the comparative analyses of European Council Conclusions – it is seen that the Council used negative political conditionality four times in the case of Croatia, while not once in the case of Slovenia. From the comparative analysis of the two patterns of conditionality used in recent enlargements, the Progress Reports of the Commission and the Presidency of the European Council Conclusions, this thesis concludes that due to a more difficult initial position of Croatia, but also the circumstances of its path to the EU, the EU institutions applied political conditionality as an interpretation of the political criteria much more meticulously than in the case of Slovenia.

Starting from the premise that political conditionality is based on consistent and normative implementation by the EU institutions, this thesis confirms this assertion: these institutions did not evaluate the countries' success only based on how successful they were in meeting the required criteria but mainly on the basis of their starting positions. The latter could be identified as the two types of factors, first are those regarding the EU absorption capacity – 'constitutional crisis' of the Union caused by the failed referendums on the Constitutional Treaty in France and the Netherlands in 2005, i. e. celebration of enlargement vs. scepticism towards it and the

enlargement fatigue that emerged after substantial changes to the configuration of the Council from 15 to 25 and then to 27 member states. The other group of factors are Croatian particularities – full cooperation with the ICTY as political condition; the fact that Slovenia negotiated in group and Croatia alone and the experience from previous enlargements.

As for the relevance of these conclusions, limited to the aims and purpose of this master thesis, one can offer possibilities for further fruitful research of the studies problematique. The finding that conditionality as an external incentive was the key mechanism that led to the adoption of EU rules by the candidate states makes salient the question of post-accession compliance (Faklner and Treib 2007, 2). As I have outlined above, the external incentives mechanism highlights the fact that where rule adoption was successful, it had been driven mainly by the membership 'carrot' promised to the candidates by the EU as an external factor (*Ibid*). Haughton's conclusion (2010, 13) that the countries that joined the EU in 2004 have supported enlargement to the Western Balkans, albeit now keener to stress the importance of meeting the criteria in part due to the experience of post-accession Romania and Bulgaria is also indicative. Since this is especially the case of Slovenia (as seen in its bilateral conditionality for resolution of open issues with Croatia stemming from the dissolution of former socialist Yugoslavia), and in the light of the fact that Croatia as to be member of the EU has already started to position itself as the leading state in the Western Balkans region, the findings of this thesis also offer potential for application to a possible (re)designing of political conditionality in future EU enlargement policy and also to (future) candidate states' foreign policy strategy in negotiation process.

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Povzetek

Demokratizacija nekdanjih socialističnih držav in prenehanje vojaško-politične delitve Evrope sta, na eni strani, spodbudila Evropsko unijo (EU, tudi Unija), da je postala odprta za nove članice (Jacobsen 1997; Lajh in Krašovec 2007). Na drugi strani pa so nekdanje socialistične države srednje in vzhodne Evrope (SVE) dosegle zadovoljivo raven razvoja; v zasledovanju cilja pridružitve EU so njihove ključne prioritete postale vladavina prava, demokracija in človekove pravice (Bučar in Brinar 2002). V tem kontekstu se je EU izkazala kot dejavnik, ki spodbuja demokratično tranzicijo in kot tak pospešuje demokratični razvoj, spoštovanje temeljnih človekovih pravic ter odprtost političnega sistema.

Poleg sposobnosti izpolnjevanja dolžnosti, ki izhajajo iz članstva, tako imenovani *acquis communautaire*, in ekonomskega kriterija (drugi in tretji kriterij), je veliko pozornosti pogosto posvečene prvemu pogoju, tj. političnemu kriteriju: zahtevam demokracije, vladavine prava, spoštovanja človekovih pravic in varstva manjšin.

Politične kriterije je potrebno razlikovati od 'političnega pogojevanja'. Pogojevanje pomeni proces določitve pogojev za članstvo v EU ter nadzor nad njihovim izpolnjevanjem. Namen določitve tovrstnih pogojev je zagotavljanje pripravljenosti držav na članstvo ter hkrati prepričevanje obstoječih članic, da nove članice ne bodo ogrozile obstoja organizacije (Barnes in Barnes 2010, 431). Politično pogojevanje je torej metoda EU za uveljavitev političnih norm, ki sestoji tako iz pozitivnih kot negativnih ukrepov. Pričujoče raziskovalno delo se osredotoča predvsem na drugo metodo – negativne ukrepe napram državam pristopnicam, ki ne izpolnjujejo omenjenih pogojev EU.

Širitev EU je obsežno in kompleksno področje in pravzaprav predstavlja razpravo o evropski prihodnosti. Širitev EU maja 2004 je bila edinstven dogodek v primerjavi s predhodnim procesom evropske integracije: deset novih članic (vključno s Slovenijo)⁶² je izpolnjevalo pogoje za članstvo do te mere, da so se lahko pridružile tej *sui generis* supranacionalni strukturi. Ko sta se v okviru zadnje širitve leta 2007 EU pridružili Bolgarija in Romunija, je bil pridružitveni postopek zaznamovan z neizbežnostjo nadaljnjih reform bolgarskega sodnega sistema, še posebej njegovih predsodnih postopkov, ter dodatnih naporov v boju s korupcijo in organiziranim kriminalom (European Commission 2011).⁶³ 9. decembra 2011 so na slovesnosti v Bruslju predstavniki Hrvaške podpisali Pogodbo o pristopu Hrvaške k Evropski uniji.⁶⁴ Ko bo Pogodba stopila v veljavo, predvidoma do 1. julija 2013, bo Hrvaška postala polnopravna članica Unije. V vmesnem obdobju bo imela status opazovalke v EU ter s tem pravico do sodelovanja v odborih Evropskega parlamenta in pravico, da pošlje opazovalce na plenarna zasedanja Parlamenta. Ta dogodek je zaznamoval uspešen konec pogajanj, ki so bila daljša kot v primeru vseh drugih tranzicijskih držav (SVED), ki so že postale članice EU.

Pričujoče znanstveno delo je temeljilo na predpostavki, da so se konkretne zahteve EU v pogajalskem procesu pomembno razlikovale, če med seboj primerjamo pridružitvena procesa Slovenije in Hrvaške. Zaradi nespornega političnega pomena (nadaljnje) širitve EU je bilo pomembno raziskati, če in s kakšnimi razlogi sta bili ti dve državi predmet različne obravnave v širitveni politiki EU.

Odlaganje z začetkom pogajanj o polnopravnem članstvu v EU ter najdlje trajajoča pogajanja med državami pristopnicami iz regije so na Hrvaškem izzvali kritike. Obči vtis je, da je EU od Hrvaške zahtevala izpolnjevanje sklopa zahtevnejših političnih pogojev kot v primeru držav, ki so se EU pridružile leta 2004 in leta 2007. Na drugi strani pa, z ozirom na to, da je vojna prevladovala na dnevnem redu Hrvaške (1991–1995), da je zaradi nje varnost postala primarna skrb države, ter upošteva dejstvo, da je bila Hrvaška v tem času izključena iz predpristopnih

⁶² Deset držav, ki so članice EU od leta 2004: Ciper, Češka, Estonija, Madžarska, Latvija, Litva, Malta, Poljska, Slovaška in Slovenija.

⁶³ Poročilo o pripravljenosti Bolgarije in Romunije na članstvo v EU, 2006.

⁶⁴ Pristopna pogodba: Pogodba o pristopu Republike Hrvaške, podpisana 9. decembra 2011, v postopku ratifikacije.

programov pomoči, kot je PHARE (*Pologne et Hongrie - Aide á Restructuration Economique*), ne preseneča dejstvo, da EU ni imela premišljenega pristopa in se je le težka soočala s problemom tamkajšnje krhke varnosti (Pridham 2005, 37).

Raziskovalno delo je temeljilo na sledečem raziskovalnem vprašanju: Če obstajajo, kakšne so razlike med aplikacijo političnega kriterija za pridružitve EU v pristopnih pogajanjih Slovenije in Hrvaške? Postavljeni sta bili sledeči tezi, ki naj bi ju z argumentacijo bodisi potrdili bodisi ovrgli: Teza 1: Evropska komisija in Evropski svet sta v odnosu do Hrvaške izvajala politično pogojevanje z bolj pikolovsko interpretacijo političnega kriterija za pridružitve k EU kot v odnosu do Slovenije.

Teza 2: Tovrstno razlikovanje med Slovenijo in Hrvaško je bilo v primeru obeh institucij EU plod razlik v oceni izhodiščnih položajev obeh držav v postopku pridružitvenih pogajanj.

Raziskovalno delo skuša na ta način dokazati, da Komisija in Evropski svet ne ocenjujeta uspešnosti države v pridružitvenih pogajanjih v skladu z *de facto* implementacijo političnih kriterijev, marveč na osnovi prvotne ocene (izhodiščnega položaja) države. Povedano natančneje; ker sta bila izhodiščna položaja Hrvaške in Slovenije v pridružitvenih pogajanjih ocenjena kot različna, sta Komisija (v svojih Poročilih o napredku) ter Evropski svet (v svojih Sklepih predsedstva) v odnosu do obeh držav različno interpretirala politične kriterije s političnim pogojevanjem. Izhodiščni položaj Hrvaške je bil ocenjen kot manj ugoden kot v primeru Slovenije, zaradi česar sta obe instituciji obravnavali državi na diskriminatoren način, s tem ko sta v primeru Hrvaške, v nasprotju s Slovenijo, pikolovsko interpretirali politične kriterije skozi prizmo političnega pogojevanja.

V prvem poglavju je s pomočjo pregleda literature utemeljena relevantnost problematike ter predstavljeno politično pogojevanje v širšem kontekstu širitvenega procesa EU in pristopnih kriterijev. Predstavljeni so tudi razlogi, ki govorijo v prid relevantnosti problematike in nujnosti tovrstnega raziskovanja, ter podrobneje razloženi nameni pričujočega raziskovalnega dela. Nadalje je predstavljena metodologija, ki je bila uporabljena v procesu odgovarjanja na zastavljeno raziskovalno vprašanje in preverjanja tez. V drugem poglavju so z uporabo metodologije, ki je vezana na zgodovinsko analizo, ter analizo in interpretacijo primarnih in

sekundarnih virov, raziskane zahteve za članstvo v EU, pri čemer je poseben poudarek dan političnim kriterijem. V tem poglavju sta orisani predpristopni strategiji, ki sta ju ubrali obe izbrani državi – Slovenija in Hrvaška –, da bi na ta način lahko identificirali ključne razlike v njihovih izhodiščnih položajih in prispevali k razumevanju, zakaj je imela Komisija v pristopnih procesih različne zahteve. Tretje poglavje se ukvarja z analizo postopka, skozi katerega mora iti vsaka država kandidatka na poti do polnopravnega članstva. Skladno z 49. členom TEU so poleg države kandidatke in držav članic ključni akterji Evropski svet, Komisija in Evropski parlament. Jurisdikcija treh akterjev se razlikuje z ozirom na fazo pogajanj (Barnes in Barnes 2010). V našem primeru je še posebej izpostavljena vloga Komisije, odločili pa smo se tudi za analizo vloge Evropskega sveta, ki je ključno politično gonilo Unije in še posebej političnega pogojevanja, uporabljenega v pogajalskem procesu EU. Politično pogojevanje kot strategija in metoda, ki se je EU poslužuje za uveljavljanje svojih političnih norm z uporabo pozitivnih in negativnih ukrepov, je obravnavana kot osrednja točka našega raziskovanja in še posebej podrobno v petem poglavju. Uporabljena je metoda opisovanja – zgodovinska analiza političnega pogojevanja in pomembni sodobni primeri pogojevanja pridruženju EU iz obdobja širitev EU med leti 1973 in 2004. Posebna pozornost je namenjena političnemu pogojevanju slovenske in hrvaške pridružitve EU, ki je predmet (primerjalne) analize v naslednjem, šestem poglavju.

Magistrsko delo predvideva, da so se konkretne zahteve EU, ki izhajajo iz političnega pogojevanja, razlikovale, če med seboj primerjamo slovenski in hrvaški pogajalski proces. Analiza, ki podpira tovrstne zaključke, bi lahko ponudila nov pogled na teoretsko razpravo o političnem pogojevanju ter pogoje, ki jih EU postavlja v srednji in vzhodni Evropi, vendar nujno zahteva tudi pravno osnovo. Izbrana sta bila dva možna načina izpeljave zaključkov: 1) aplikacija primerjalne analize uspešnosti držav pri izpolnjevanju političnih kriterijev in političnega pogojevanja s strani EU, kakor izhaja iz poročil Komisije o napredku v slovenskem in hrvaškem pogajalskem procesu in 2) primerjava političnega pogojevanja in političnega napredka držav, kakor izhaja iz Sklepov predsedstva Evropskemu svetu. Časovni razpon analize dokumentov sega od začetka pristopnih pogajanj do njihovega konca in podpisa pristopne pogodbe.

Dragocen vir, ki je omogočal preverbo omenjenega vprašanja, so bila mnenja odločevalcev. Na hrvaški strani sta bila izvedena intervjuja z ministrico za zunanje zadeve Republike Hrvaške,

gospo Vesno Pusić, in z nekdanjim vodjo pogajalcev o hrvaškem pristopu k EU ter sedanjim veleposlanikom na Misiji Hrvaške pri EU, gospodom Vladimirjem Drobjakom. Na slovenski strani sta bila izvedena intervjuja s pooblaščenim ministrom na Veleposlaništvu Republike Slovenije v Republiki Bosni, Davidom Brozino,⁶⁵ ter z anonimnim diplomatskim virom s slovenskega Ministrstva za zunanje zadeve (MZZ).

S pomočjo primerjalne analize Poročil Komisije o napredku je bilo mogoče zaključiti sledeče: obstaja jasno odstopanje v obsegu in količini informacij, ki jih vsebujejo, prav tako pa je bil v primeru Hrvaške, posebno v primerjavi s Slovenijo, vsak politični kriterij detajlno obravnavan, kar še posebej zadeva področji varstva manjšin in sodstva. Skladno s podatki in prej predstavljeno analizo, tj. kvalitativno in kvantitativno razliko v začetni oceni obeh držav kandidatki in kvantitativno analizo uporabe političnih kriterijev ter pogojev v zvezi z z manjšino/-ami, kjer številčno prednjači Hrvaška in ne Slovenija, vključno s posebnim poglavjem, o spoštovanju političnih kriterijev (sodstvo in temeljne pravice), ki je bilo vpeljano zgolj za Hrvaško, govori vse v prid trditvi iz magistrskega dela, da je Komisija v primeru Hrvaške bolj pikolovsko izvajala politično pogojevanje kot v primeru Slovenije. Do podobnih zaključkov pridemo s primerjalno analizo Sklepov Evropskega sveta – Svet je v primeru Hrvaške uporabil negativno politično pogojevanje štirikrat, med tem ko ga v primeru Slovenije ni uporabil niti enkrat. Sledeč primerjalni analizi dveh vzorcev pogojevanja, uporabljenih v nedavnih širitvah, Poročilom Komisije o napredku in Sklepom predsedstva Evropskega sveta, v magistrskem delu zaključujemo, da so zaradi zahtevnejše izhodiščne pozicije Hrvaške, a tudi zaradi okoliščin na njeni poti do EU, institucije EU izvajale politično pogojevanje kot interpretacijo političnega kriterija veliko bolj pikolovsko kot v primeru Slovenije. Izhajajoč iz premise, da je za politično pogojevanje ključna konsistentna in normativna implementacija s strani institucij EU, magistrsko delo potrjuje sledečo trditev: institucije EU niso ocenjevale uspeha držav zgolj na osnovi njunega uspeha pri izpolnjevanju določenih kriterijev, temveč predvsem na osnovi njunih izhodiščnih pozicij. Kot vzrok za to lahko vidimo dva tipa dejavnikov; prvi zadevajo absorpcijsko sposobnost EU – 'ustavna kriza' Unije, ki jo je povzročil padec referendumov o Ustavni pogodbi v Franciji in

⁶⁵ David Brozina je bil II. sekretar na Stalnem predstavništvu Slovenije v Bruslju, zadolžen za koordinacijo v okviru Coreper II. Nato je delal na Evropski komisiji kot nacionalni ekspert na Generalnem direktoratu za svobodo, varnost in pravičnost, kjer je bil zadolžen za medinstitucionalne odnose.

na Nizozemskem leta 2005, tj. proslavljanje širitve proti s tem povezanim skepticizmom ter 'širitvena utrujenost', ki se je pojavila po bistvenih spremembah v sestavi Sveta oz. povečanju s 15 na 25 in kasneje 27 držav članic. Drugo skupino dejavnikov predstavljajo hrvaške posebnosti – polno sodelovanje z Mednarodnim kazenskim sodiščem za nekdanjo Jugoslavijo (MKSNJ) kot politični pogoj, dejstvo, da se je Slovenija pogajala v skupini in Hrvaška sama, ter izkušnje iz preteklih širitev.

V zvezi s pomenom teh zaključkov, omejenim z nameni in ciljem tega magistrskega dela, lahko izpostavimo možnosti za nadaljnje plodno raziskovanje problematike pričujoče raziskave. Ugotovitev, da je bilo pogojevanje kot zunanja spodbuda ključni mehanizem, ki je vodil v sprejetje pravil EU s strani držav kandidatk, odpira vprašanje o s pravili skladnim ravnanjem v obdobju po pridružitvi (Faklner in Treib 2007, 2). Mehanizem zunanjih spodbud osvetljuje dejstvo, da so bili primeri uspešnega sprejetja pravil EU predvsem posledica 'korenčka' v obliki članstva, obljubljenega kandidatkam s strani EU kot zunanjega dejavnika (*ibid.*). Nazoren je tudi Haughtonov zaključek (2010, 13), da države, ki so se EU pridružile leta 2004 podpirajo širitev na zahodni Balkan, čeprav sedaj bolj vneto poudarjajo pomen izpolnjevanja kriterijev tudi zaradi izkušenj iz obdobja po pridružitvi Romunije in Bolgarije. Ker slednje zadeva predvsem Slovenijo (izhajajoč iz bilateralnega pogojevanja za rešitev odprtih vprašanj s Hrvaško, ki izvirajo iz razpada nekdanje socialistične Jugoslavije) in v luči dejstva, da se Hrvaška kot bodoča članica EU že skuša uveljaviti kot vodilna država v regiji zahodnega Balkana, imajo ugotovitve pričujočega magistrskega dela potencial, da se jih aplicira pri morebitnem (pre)oblikovanju političnega pogojevanja pri bodoči širitveni politiki EU ter pri zunanjepolitičnih strategijah (bodočih) držav kandidatk v njihovem pogajalskem procesu.